TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 136.

W. H. ANSLEY, M. H. GLEASON, AND R. O. EDMONDS, APPELLANTS,

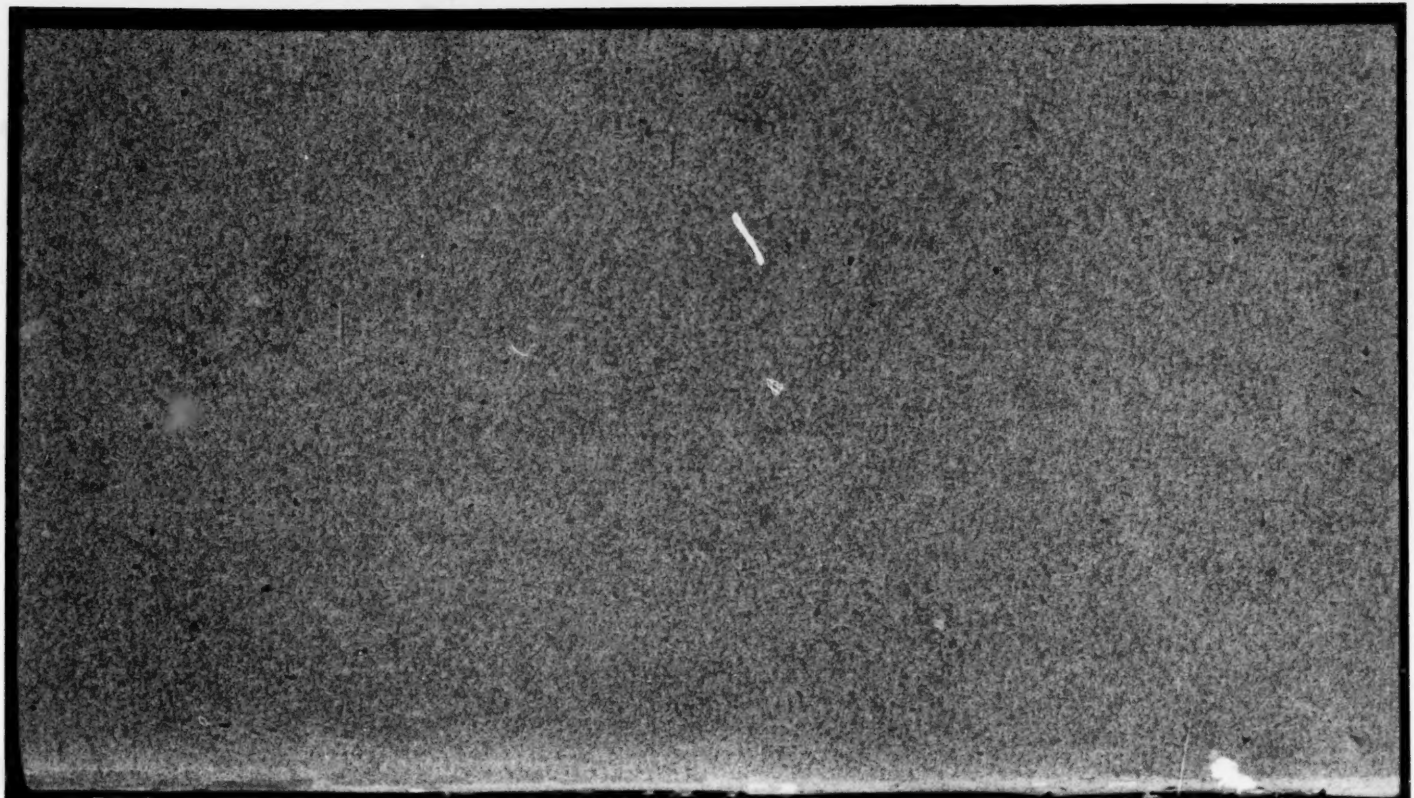
vs.

N. B. AINSWORTH, L. C. BURRISS, C. E. WOODS, JAMES ELLIOTT, AND THE OLA COAL AND MINING COMPANY.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN TERRITORY.

FILED SEPTEMBER 30, 1899.

(17,518.)



(17,518.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 404.

W. H. ANSLEY, M. H. GLEASON, AND R. O. EDMONDS, APPELLANTS,

vs.

N. B. AINSWORTH, L. C. BURRISS, O. E. WOODS, JAMES ELLIOTT, AND THE OLA COAL AND MINING COMPANY.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN TERRITORY.

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1 UNITED STATES OF AMERICA, } ss:
Indian Territory, Central Judicial District, }

Pleas in the United States court for the central district of the Indian Territory, at South McAlester, I. T., in the cause numbered upon the equity docket 2224 and entitled W. H. Ansley *et al.*, plaintiffs, *vs.* N. B. Ainsworth *et al.*, defendants, wherein W. H. Ansley, M. H. Gleason, and R. O. Edmonds are plaintiffs and N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and the Ola Coal & Mining Company are defendants.

Before the Honorable W. H. H. Clayton, judge of said court.

On the 31st day of March, 1899, there was filed in the office of the clerk of said court, at South McAlester, the amended complaint of the plaintiffs, which is in words and figures as follows, to wit:

In the United States Court in and for the Central District of the Indian Territory, Held at South McAlester.

W. H. ANSLEY ET AL., Plaintiffs,
vs.
N. B. AINSWORTH ET AL., Defendants. } No. 2224. Suit in Equity.

Amended Complaint.

By leave of the court first had, plaintiffs in the above numbered and entitled cause file this their amended complaint so that the same shall read as follows:

2 Now come W. H. Ansley, M. H. Gleason, and R. O. Edmonds, hereinafter styled plaintiffs, and, complaining of N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and the Ola Coal & Mining Company, represent:

That the plaintiffs W. H. Ansley is by blood a member and citizen of the Choctaw nation of Indians, recognized and accepted as such by the constituted authorities thereof, and now resident at McAlester, in said Choctaw nation; that the plaintiffs M. H. Gleason and R. O. Edmonds are citizens of the United States by birth, who, by intermarriage with members of the Choctaw nation, solemnized on the part of the said M. H. Gleason on the 22nd day of January, 1871, and on the part of the said R. O. Edmonds on the 16th day of July, 1870, in form and manner as required by the laws of the Choctaw nation, became on said dates citizens of the Choctaw nation, and by virtue of provisions of treaties by said nation made with the United States, hereinafter set out, and of the laws of said nation, entitled to all the rights, privileges, benefits, and immunities of citizens of said nation under the laws thereof in anywise belonging or appertaining, and that both said plaintiffs have since said dates been recognized and accepted by the constituted authorities of said nation as members and citizens thereof, and have since said dates continu-

ously resided in said nation, and that said plaintiffs now reside at Wilburton, in said nation.

That the defendant N. B. Ainsworth is a citizen of said nation, resident at McAlester, Indian Territory, and the defendant L. C. Burriss is a citizen of the Chickasaw nation, resident at Tishomingo, in said nation; that the defendant O. E. Woods is a citizen of the United States, resident at Wilburton, in the Choctaw nation; that the defendant James Elliott is a citizen of the United States, resident at Krebs, in said Choctaw nation, and that the Olo Coal & Mining Company is a corporation organized under the laws
3 of Kansas, engaged in operating a mine in said Choctaw nation, at Wilburton, I. T., and having its offices and agents at said point, the defendant James Elliott being president thereof and the defendant O. E. Woods general manager; that the defendants Ainsworth and Elliott reside nearer to the town of South McAlester than they do to any other point at which a United States court is held in the central district of the Indian Territory.

1.

Plaintiffs aver that under and by virtue of article 2 of the treaty executed between the United States of America and the Choctaw nation of Indians on October 18, 1820, the United States, in consideration of the cession to it by the Choctaw nation of certain of their lands east of the Mississippi, described in said treaty, ceded to said nation the tract of country west of the Mississippi river situated between the Arkansas and Red rivers and bounded as follows:

"Beginning on the Arkansas river, where the lower boundary line of the Cherokees strikes the same, thence up the Arkansas to the Canadian fork and up the same to its source, thence due south to the Red river, thence down Red river three miles below the mouth of Little river which empties itself into Red river on the north side, thence a direct line to the beginning."

That by article 2 of the treaty executed between the United States and the Choctaw nation of Indians on September 27, 1830, it was provided:

"That the United States under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw nation a tract of country west of the Mississippi river, in fee-simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas river, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits, thence due south to Red river, and down Red river to the west boundary of the Territory of Arkansas, thence north along that line to the beginning, the boundary of the same to be agreeably to the treaty made and concluded at Washington city in the year 1825, the grant to be executed as soon as the present treaty shall be ratified."

4 That by article 4 of said treaty it was agreed and provided as follows:

"The Government and people of the United States are hereby

obliged to secure to the said Choctaw nation of red people the jurisdiction and government of all persons and property that may be within their limits west, so that no State or Territory shall ever have a right to pass laws for the government of the Choctaw nation of red people and their descendants, and that no part of the land granted them shall ever be embraced in any Territory or State, but the United States shall forever secure said Choctaw nation from and against all laws except such as from time to time may be enacted in their own national council not inconsistent with the Constitution, treaties and laws of the United States, and except such as may and which have been enacted by Congress to the extent that Congress, under the Constitution, are required to exercise legislation over Indian affairs, but the Choctaws, should this treaty be ratified, express a wish that Congress may grant to the Choctaws the right of punishing by their own laws any white man who shall come into their nation and infringe any of their national regulations."

That by article 12 of said treaty it was agreed and provided, among other things:

"All intruders shall be removed from the Choctaw nation and kept without it. Private property to be always respected, and on no occasion taken for public purposes without just compensation being made therefor to the rightful owner."

That by the first article of a convention and agreement made on January 17, 1837, between the Choctaw tribe of red people and the Chickasaw tribe of Indians it was provided:

"It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws now hold it, except the right of disposing of it (which is held in common with the Choctaws and Chickasaws) to be called the Chickasaw district of the Choctaw nation; to have an equal representation in their general council, and to be placed on an equal footing in every other respect with any of the other districts of said nation, except, a voice in the management of the consideration which is given for these rights and privileges; and the Chickasaw people to be entitled to all the rights and privileges of Choctaws, with the exception of participating in the Choctaw annuities and the consideration to be paid for these rights and privileges, and to be subject to the same laws to which the Choctaws are; but the Chickasaws reserve to themselves the sole right and privilege of controlling and managing the residue of their funds so far as is consistent with the late treaty between the said people and the Government of the United States, and of making such regulations and electing officers for that purpose as they may think proper."

That by article 2 of said convention and agreement it was provided as follows:

"The Chickasaw district shall be bounded as follows, viz: Beginning on the north bank of Red river at the mouth of Island bayou about eight or ten miles below the mouth of False Washita, thence running north along the main channel of said bayou to its source; thence along the dividing ridge between the

Washita and Low Blue rivers to the road leading from Fort Gibson to Fort Washita; thence along said road to the line dividing Mosholatubbee and Pushmataha districts; thence eastwardly along said district line to the source of Brushy creek, thence down said creek to where it flows into the Canadian river, ten or twelve miles above the mouth of the South fork of the Canadian; thence west along the main Canadian river to its source, if in the limits of the United States, or to those limits; and thence due south to Red river, and down Red river to the beginning."

That by a patent executed by the President of the United States on March 23rd, 1842, conveyance was made to the Choctaw nation of the lands described in the second article of the treaty of 1830, above set out, in terms contained in the conveying clause, as follows:

"Now know ye, that the United States of America, in consideration of the premises and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted and by these presents do give and grant unto the said Choctaw nation the aforesaid tract of country west of the Mississippi, to have and to hold the same, with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, as intended to be conveyed by the aforesaid article, in fee-simple to them and their descendants to inure to them while they shall exist as a nation and live on it, liable to no transfer or alienation except to the United States or with their consent."

That in the preliminary clause of the treaty of 1855, made and executed between the United States and the Choctaw and Chickasaw tribes of Indians, it was recited that the political connection theretofore existing between the Choctaw and Chickasaw tribes of Indians had given rise to unhappy and injurious dissensions and controversies among them, which rendered necessary a readjustment of their relations to each other and to the United States, and by article 2 of said treaty it was provided as follows:

"The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country; namely; beginning at a point on the Arkansas river one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence south to Red river, thence up Red river to the point where the meridian of one hundred degrees west longitude crosses the same; thence north and along said meridian to the main Canadian river; thence down said
6 river to its junction with the Arkansas river; thence down said river to the place of beginning."

"And pursuant to the act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal undivided interest in the whole, provided, however, no part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

That by article 2 of said treaty a district for the Chickasaws was established and the boundaries thereof fixed and declared.

That by article 3 of said treaty it was provided as follows:

"The remainder of the country held in common by the Choctaws and Chickasaws shall constitute the Choctaw district, and their officers and people shall at all times have the right of safe conduct and free passage through the Chickasaw district."

That by article 4 of said treaty it was provided as follows:

"The government and laws now in operation and not incompatible with this instrument shall be and remain in full force and effect within the limits of the Chickasaw district until the Chickasaws shall adopt a constitution and enact laws superseding, abrogating or changing the same. And all judicial proceedings within said district commenced prior to the adoption of constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws."

That by article 5 of said treaty it was provided as follows:

"The members of either Choctaw or Chickasaw tribe shall have the right freely to settle within the jurisdiction of the other, and shall thereupon be entitled to all the rights, privileges and immunities of citizens thereof, but no member of either tribe shall be entitled to participate in the funds belonging to any other tribe. Citizens of both tribes shall have the right to institute and prosecute suits in the courts of either, under such regulations as may from time to time, be prescribed by their respective legislatures."

That by article 7 of said treaty it is provided as follows:

"So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof regulating trade and intercourse with the Indian tribes, the Choctaws and the Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits, excepting, however, all persons with their property
7 who are not by birth, adoption or otherwise citizens or members of either the Choctaw or Chickasaw tribe, and all persons not being citizens or members of either tribe found within their limits shall be considered intruders and be removed and kept out of the same by the United States agent, assisted, if necessary, by the military, with the following exceptions, viz: Such individuals as are now or may be in the employment of the Government and their families, those peaceably traveling or temporarily sojourning in the country or trading therein under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws with the assent of the United States agent to reside within their limits, without becoming citizens or members of either of said tribes."

That by article 21 of said treaty it was provided:

"This convention shall supersede and take the place of all former treaties between the United States and the Choctaws, and also of all treaty stipulations between the United States and the Chickasaws and between the Choctaws and the Chickasaws inconsistent with this agreement, and shall take effect and be obligatory upon the

contracting parties from date hereof whenever the same shall be ratified by the respective councils of the Choctaw and Chickasaw tribes and by the President and Senate of the United States."

That in pursuance of the provisions of the treaty of 1820 and of subsequent treaties the Choctaw people erected a government, distributed its powers among executive, legislative, and judicial departments, established written constitutions, developed a body of laws, written and unwritten, exercised jurisdiction over its citizens and its tribal property, administered justice, established schools, and in all respects conformed to the laws and usages of civilized States.

That in pursuance of an act of the general council of the Choctaw nation, approved October 24, 1859, representatives of the Choctaw nation in convention assembled ordained and established a constitution superseding prior constitutions, which constitution was in pursuance of said act submitted for ratification or rejection to the qualified voters of the Choctaw nation at an election held as provided by law, and was at such election adopted by the unanimous vote of all the electors participating in such election, and as thus adopted has continued as the supreme organic law of the Choctaw nation to the present time.

8 That by section 5 of article 1, entitled "Declaration of rights," contained in said constitution, it is provided:

"No person shall for the same offense be twice put in jeopardy of life or limb, nor shall any person's property be taken or applied to public use without the consent of the general council, and without just compensation being first made therefor."

That by section 11 of said article of said constitution it is provided:

"That no freeman shall be taken or imprisoned, or disseized of his freehold liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty and property but by the judgment of his peers or the law of the land."

That by section 16 of said article 1 of said constitution it is provided:

"That no power of suspending laws shall be exercised except by the general council or its authority."

That by section 1 of said article 1 of said constitution it is provided:

"That in all criminal prosecutions the accused hath a right to be heard by himself or counsel, or both, to demand the nature and cause of the accusation, to be confronted by the witnesses against him, to have a compulsory process for obtaining witnesses in his favor, and in all prosecutions by indictment or information, a speedy and public trial by an impartial jury of the county or district where the offense was committed; that he cannot be compelled to give evidence against himself, nor can he be deprived of life, liberty or property but by due course of law."

By section 21 of said article of said constitution it is provided:

"No conviction for any offense shall work corruption of blood and forfeiture of estate. The general council shall pass no bill of

attainder, retrospective law, nor law impairing the obligation of contracts."

By section 18 of article 7 of said constitution it is provided:

"Any citizen of this nation who may find any mine or mines or mineral waters shall have exclusive right and privilege to work the same so long as he may choose, within one mile in any direction from his works or improvements; provided, however, he does not interfere with the rights of the former settler."

That by article 7 of a treaty made and executed between
9 the United States and the Choctaw and Chickasaw nations of Indians on the 28th day of April, 1866, it was provided as follows:

"The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of persons and property within the Indian Territory, provided, however, such legislation shall not in anywise interfere with or annul their present tribal organizations, or their respective legislatures or judiciaries, or the rules, laws, or customs of the Choctaw and Chickasaw nations respectively."

That by article 10 of said treaty it was provided as follows:

"The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw nations entered into prior to the late rebellion, and in force at that time, not inconsistent herewith, and further agrees to renew the payment of all annuities and other monies accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 10th day of June in the year 1866."

That said treaty contained provisions looking to the allotment in severalty of the lands held in common by the Choctaw and Chickasaw people.

That by article 33 of said treaty it was provided:

"All lands selected as herein provided shall hereafter be held in severalty by the respective parties, and all unselected land shall be the common property of the Choctaw and Chickasaw nations in their corporate capacity, subject to the joint control of their legislative authorities."

That the selection of land and the allotment of the same as provided for in said treaty was never made, and that the people of the Choctaw and Chickasaw nations have continued to this date to hold their lands as they held them before the adoption of said treaty.

That by article 26 of said treaty it was provided as follows:

"The right here given to the Choctaws and Chickasaws respectively shall extend to all persons who have become citizens by adoption or intermarriage of either of said nations, or who may hereafter become such."

That by article 38 of said treaty it was provided:

"Every white person who, having married a Choctaw or Chickasaw, resides in said Choctaw or Chickasaw nation, or who
10 has been adopted by the legislative authorities, is to be deemed a member of said nation and shall be subject to the

laws of the Choctaw and Chickasaw nation, according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw."

That by article 43 of said treaty it was provided:

"The United States promise and agree that no white person, except officers, agents and employees of the Government and of any internal improvement company, or persons traveling through or temporarily sojourning in the said nations or either of them, shall be permitted to go into said Territory unless formally incorporated and naturalized by the joint action of the authorities of both nations, into one of said nations of Choctaws and Chickasaws, according to their laws, customs or usages, but this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of said nations."

By article 45 of said treaty it is provided as follows:

"All the rights, privileges and immunities heretofore possessed by said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be in full force so far as they are consistent with the provisions of this treaty."

2.

That under and by virtue of the provisions of the Choctaw constitution, in section 18 of article 7 above set out, citizens of the Choctaw nation, from the time of its adoption, began to prospect for coal and incurred much expense in making discoveries of coal theretofore unknown; that from said date without interruption or hindrance to June 28, 1898, they exercised the right of working by themselves or licensing or contracting with other persons to work for them said coal discoveries and to mine coal thereon for the space of one mile in every direction from the improvements made upon said coal discovery; that such coal discoveries within such limits were, by uniform custom, usage, and construction, from the adoption of the constitution, as aforesaid, held to be the property of the Choctaw citizen discovering the same or of those to whom he
11 devised or assigned the same, provided such devisees or assignees were citizens of the Choctaw nation; that from the adoption of the constitution aforesaid the custom and usage of leasing said coal claims by the discoverers to persons or companies or corporations for the purpose of mining coal thereon for a stipulated royalty to be paid to the owner of said coal discovery has been uniform and long since became thoroughly established and general throughout the Choctaw nation; that said nation recognized the

rights of such coal discoverer to lease such coal claims and to receive royalties thereon and the uniform custom and usage that had grown up under such constitutional provision, as aforesaid; that said nation, by act of its council, approved by its governor, passed laws by which the persons or companies or corporations working such coal claims under leases from the individual owners thereof, as aforesaid, before they were permitted to sell the coal mined were required to obtain a contract from the national agent of said Choctaw nation, giving them the right to sell said coal upon payment of stipulated royalties to the Choctaw nation, amounting to one-half cent per bushel of coal.

A copy of such act of the Choctaw council, approved October 30, 1888, and found on pages 106, 107, 108, 109, and 110 of Durant's Code of the Laws of the Choctaw Nation, is hereto attached, marked "Exhibit A," made a part of this complaint, and specially plead as a part hereof.

That under such law persons, companies, and corporations mining coal upon the coal discoveries leased from individuals, mine-owners, and claimants, as aforesaid, obtained constracts from the national agent of the Choctaw nation in form and substance the same as that which is attached hereto, marked "Exhibit B," and made a part hereof, and which was obtained by defendant Woods from the national agents of said nations.

12 That the rights of the discoverers of coal claims, their heirs or assigns, to work, lease, or assign such claims were fully recognized in all the Choctaw courts, became the subject of devise or administration in the courts of the Choctaw nation on the death of said discoverer or owner of said coal claims, were sold, transferred, and pledged by one member of the nation to another in all the modes incident to absolute ownership of property, and the royalties payable from the lessees of said coal claims were pledged as security for advancements of money or supplies and became the basis of large advancements in a business way by persons within and without the Choctaw nation.

That the rights of coal discoverers, their heirs or assigns, to the coal claims within the limits above set out, as established under the uniform custom and usage of the Choctaw nation and the construction of the Choctaw constitution, as aforesaid, were known to and fully recognized by the executive officers of the United States, the Secretaries of the Interior and their agents, inclusive, and that the same were fully recognized by the Congress in various acts of legislation; that in the courts of the United States these rights, originating under the constitutional provision and under the laws, custom, and usage in the Choctaw nation, as above set out and as herein stated and declared, were at all times recognized, vindicated, upheld, and enforced.

That under the clause of the Choctaw constitution aforesaid and the usage and custom in the Choctaw nation with reference to mines and minerals thereunder, the discovery of coal was, as heretofore stated, attempted by great numbers of the citizens of the Choctaw nation at much and great expense, both of time, labor, and

money, resulting in many discoveries of coal which were worked by the discoverers or owners or were leased by them to persons, companies, or corporations to be worked and mined, thereby
13 greatly promoting the development and welfare of the Choctaw nation, producing large royalties for said nation, which became the support of its schools, and tending to advance the civilization and education of the entire Choctaw people, such royalties for the past four or five years amounting to over $100,000 per annum.

That it became the settled policy of said Choctaw nation to encourage coal discoveries by its citizens and to cause the development of coal production by permitting the sale of such coal claims to other Choctaw citizens and the leasing of such claims or discoveries to persons or companies or corporations to mine coal thereon, as aforesaid; that in 1889 it passed an act entitled "An act to provide for the further development of the mineral resources of the Choctaw nation," a copy of which act is hereto attached, marked "Exhibit C," made a part hereof, and specially plead as part of this complaint.

That by its constitutional provision, its laws, usages, and customs, and its definite and consistent policy, as aforesaid, not only were citizens of the Choctaw nation induced to incur expense in attempting and making coal discoveries, as aforesaid, but great numbers of persons, companies, and corporations not citizens of the Choctaw nation were led to obtain, with the full knowledge and approval of the constituted authorities of the Choctaw nation, leases of said coal claims and discoveries from the individual Choctaw citizens discovering and owning the same; that for the purpose of mining coal on such leased coal claims said persons, companies, and corporations incurred great expense in preparing the mines to be worked, in purchasing expensive machinery, and establishing mining plants, erecting houses for the miners, and establishing stores; that the improvements and outlays of such companies and corporations aggregated millions of dollars, expended upon the basis of
14 the rights of the individual discoverers and owners of coal claims, as herein averred; that the policy of the Choctaw nation to increase its revenues and promote the welfare of its people by stimulating the discovery of coal by its citizens and the production of coal through their efforts in inducing capitalists to establish mining plants on the individual coal claims upon the payment of stipulated royalties to the nation and the individual was followed steadily and consistently and found repeated legislative expression; that finally, on September 18, 1896, it passed an act to confirm and place beyond question the rights of its citizens to spur their energies in coal development and to reassure coal-producers in their lease contracts with individual owners of coal claims. Such act was as follows:

"Be it enacted by the general council of the Choctaw nation assembled:

SEC. 1. That the constitutional rights of any citizen of the Choctaw nation to discover and claim any mine or mineral substance, or

anything of value found beneath the surface of the earth in this nation, and the right to work the same for the purpose of having such discovery made of value to himself and to the nation, as provided for by act of council passed and approved December 27, 1889 entitled 'An act to provide for the further development of the mineral resources of the Choctaw nation' is hereby ratified and affirmed and all such claims and discoveries where the laws of this nation have been observed in making and recording the same, are hereby declared to be the property of the citizen or citizens who have discovered and recorded such claims, their heirs or assigns, and are to be recognized and treated as the property of the citizens holding such claims, and may be by such holders sold, assigned, or devised unto their heirs or assigns, provided the said heirs or assigns shall be citizens of the Choctaw nation at the time of making such disposition of such claims; and citizens holding such claims may lease them to non-citizens or foreign corporations, provided always that the interest and rights of the Choctaw nation are recognized in such leases. All leases of coal or other mineral rights heretofore made by citizens of the Choctaw nation to non-citizens or foreign corporations, in which leases the interest and rights of the Choctaw nation have been recognized, the laws of the Choctaw nation observed, and the conditions and stipulations on the part of the lessee fulfilled, are hereby ratified and confirmed.

SEC. 2. That it shall be the duty of the national agent of the Choctaw nation to encourage and assist in every way in his power, all citizens of this nation in discovering and developing its mineral or other resources, and where any mineral or other thing of value is discovered, not theretofore known to exist in this nation nor provided in the royalty tables of the nation, then and in that event the national agent shall, with the advice and consent of the principal chief of the nation, promptly fix the royalty to be paid over to the nation during the pending of the working or lease of such claims, and shall use the utmost diligence in bringing about the successful workings of claims and consequent increase of revenue of this nation.

SEC. 3. This act shall take effect and be in full force from and after its passage. Approved September 18, 1896."

3.

That under and by virtue of the conventions and agreements between the Choctaw nation and the Chickasaw nation, as heretofore set out, each nation recognized in the other the right to legislate over the persons and property within the limits of their respective districts; that each nation enacted its own legislation for the protection and development of mining rights and interests within their respective limits; that the uniform usage and custom of the Choctaw nation with reference to coal claims and discoveries, and its constitutional provision in regard thereto, as heretofore set out, were fully known, acquiesced in, and consented to by the Chickasaw nation and the constituted authorities thereof; that the proportion of royalty justly payable to the Chickasaw nation

and arising from the sale of coal or other minerals produced in the Choctaw nation, under the constitution, laws, usages, and customs thereof, as above set out, became, soon after the adoption of the constitutional provision as to mines and minerals aforesaid, a matter of consideration between the constituted authorities of the two nations, under the sanction of the Interior Department of the United States, and by an arrangement between the two nations under such sanction the Chickasaw nation became entitled to receive one-fourth of the coal royalties arising from the sale of coal mined in the Choctaw nation in manner and under the laws and usages aforesaid; that the constituted authorities of the Chickasaw nation have during a long period of years received their one-fourth of such royalty and have applied the same to their national uses.

4.

That heretofore, to wit, on the 7th day of November, 1890,
16 plaintiffs Gleason, Edmonds, and one Lorin A. Riddle, a citizen by blood of the Choctaw nation, proceeding in conformity with its constitutional provision touching mines and mineral waters and the laws, usage, and custom of said nation, as above set out, prospected for and, at the expense of time, labor, and money by them incurred, discovered coal within the present limits of the Choctaw nation, as defined by provisions of treaties heretofore set out, at a point where coal was not theretofore known to exist and from which point within a mile in any direction it was not known to exist theretofore, said point of discovery being about 250 yards south of the road-bed of the Choctaw Coal & Railroad Company and 350 yards south of the William A. Riddle place on the old overland road from Fort Smith, Arkansas, to Springtown, I. T. Plaintiffs aver that within the limits of said coal discovery there was no settler at the time of said discovery, and that they did not and have not interfered in anywise with the rights of any former settler in prospecting for and discovering coal as herein alleged and in producing coal and leasing said coal claims as hereinafter alleged.

That said plaintiffs and said Lorin A. Riddle duly recorded said coal discovery in the office of the county clerk of Gaines county, Choctaw nation, in which county said discovery was situated; that said plaintiffs and said Riddle made an excavation at the point of discovery, and by an expenditure of labor and money produced coal therefrom which they used and disposed of; that by virtue of these facts, under the constitutional provision of the Choctaw nation aforesaid and under the laws, usages, and customs of said nation as above set out, and, in particular, under the acts of the Choctaw council as heretofore pleaded, plaintiffs Gleason and Edmonds and the said Lorin A. Riddle acquired the right to mine coal within a circle having a radius of one mile and beginning at the point of ex-
17 cavating coal, as aforesaid, and to give, bequeath, sell, transfer, convey, or assign said right to any other Choctaw citizen, and to contract by lease or otherwise with any person, company, or corporation to mine coal for a period of years within the circle aforesaid, to the exclusion of any other persons, companies, or cor-

porations whatsoever so long as said persons, companies, or corporations complied with the laws of the Choctaw nation to them and their mining operations applicable; that said right of said Gleason, Edmonds, and Riddle, as thus stated, became vested, absolute, and indefeasible so long as they chose to exercise the same; that plaintiffs Gleason and Edmonds have continually from the time of discovery of coal on said claim to this time chosen and do now choose to exercise and exert their rights as above declared in and to said coal claim, and do hereby assert and declare the same; that in like manner the said Lorin A. Riddle did continuously from the time of the discovery aforesaid choose to exercise and did exercise his right as above declared in and to said coal claim and discovery until he sold and conveyed the same to the plaintiff W. H. Ansley; that in the exercise of his rights in the premises the said Lorin A. Riddle on February 28, 1898, sold and conveyed to plaintiff W. H. Ansley, for a valuable consideration by said Ansley to him paid, his undivided one-third interest in said coal claim; that the same was acquired, as the discovery of Gleason, Edmonds, and Riddle had been made, in the faith induced by the terms of the treaties aforesaid, the constitution and laws, usages and customs of the Choctaw nation above set out, the uniform course of business dealing with reference to such coal claims and discoveries as known to the authorities of the United States and assented to by the authorities of the Choctaw and Chickasaw nations and vindicated, declared, established, and upheld by the courts of the Choctaw nation
18 and of the United States; that by virtue of the purchase by plaintiff Ansley of the right and interest of Lorin A. Riddle in said coal claim and discovery in manner as aforesaid said plaintiff acquired a vested right in and to the same, perfect, absolute, and indefeasible, and existing so long as he chose to exercise the same; that he chooses still to exercise and enjoy said right, and seeks by this action to have the same protected and preserved.

Plaintiffs further say that if they are in law mistaken as to the duration of their right in the coal claim above described under the facts herein stated, then they allege that said right is vested, absolute and indefeasible so long as the Choctaw nation shall exist as a nation and until said right shall have been divested in the mode provided by the laws of said nation.

That for the work and labor done and money expended by plaintiffs in making coal discoveries and for producing coal thereon, and for such work done and money expended in connection with their coal claim and discovery herein described, they have not been, reimbursed, paid, or compensated; that plaintiffs' rights in said coal discovery, as herein averred, exceed in value the sum of five thousand dollars.

5.

That heretofore, to wit, on the 8th day of December, 1896, plaintiffs Gleason, Edmonds, and the said Lorin A. Riddle entered into a contract with the defendant O. E. Woods, whereby the said Woods was authorized and permitted to conduct mining operations and to

mine coal on the coal claim or discovery above described for the period of six years from the date of said contract, in consideration of his paying to said plaintiffs and said Lorin A. Riddle a royalty of one-fourth of one cent per bushel on all coal mined on said discovery or coal claim, which was the customary royalty, and upon his compliance with the laws of the Choctaw nation in such
19 mining operations applicable, a copy of which lease is hereto attached, marked "Exhibit —," and made a part hereof; that the said Woods, by arrangement and agreement with the defendant The Ola Coal & Mining Company, authorized said company to mine coal within the limits of said coal claim or discovery as above described; that the terms of said agreement are not known to these plaintiffs and cannot more particularly be set out, but under such agreement said Ola Coal and Mining Company became bound to pay plaintiffs royalty on coal produced by it on the coal claim aforesaid according to the terms of the original agreement between Woods and plaintiffs Gleason, Edmonds, and said Lorin A. Riddle; that said O. E. Woods and said Ola Coal & Mining Company have under the contract from plaintiffs aforesaid mined coal within the limits of said coal claim or discovery, as above described, to the amount of — tons; that for said coal so mined by them they are indebted to plaintiffs in the sum of eleven hundred dollars, which is due and payable.

6.

Plaintiffs further aver that by section 16 of an act of Congress entitled "An act for the protection of the people of the Indian Territory, and for other purposes," approved June 28, 1898, it was made unlawful for any person, after the passage of said act, to claim, demand, or receive, for his own use or the use of any one else, any royalty on oil, coal, asphalt, or other mineral within the limits of any of the tribes in the Indian Territory, or for any one to pay any individual any such royalties or rents or any consideration therefor whatsoever.

By section 18 it was provided that any person convicted of violating the above provision should be deemed guilty of a misdemeanor, and punished by a fine of not less than $100, and should stand committed until such fine and costs were paid, and
20 should forfeit possession of any property in question, and that each day on which said offence was committed or continued to exist should be deemed a separate offence.

That by section 29 of said act it was provided as follows:

"That the agreement made by the commission to the five civilized tribes with commissions representing the Choctaw and Chickasaw tribes of Indians on the 23rd day of April, 1897, as herein amended, is hereby ratified and confirmed, and the same shall be of full force and effect if ratified before the first day of December, 1898, by a majority of the whole number of votes cast by the members of said tribes at an election held for that purpose; and the executives of said tribes are hereby authorized and directed to make public proclamation that said agreement shall be voted on at the next gen-

eral election, or at any special election to be called by such executives for the purpose of voting on said agreement; and at the election held for such purpose, all male members of each of said tribes qualified to vote under his tribal laws shall have the right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not; provided, that no person whose right to citizenship in either of said tribes or nations is now contested in original or appellate proceedings before any United States court shall be permitted to vote at said election; provided, further, that the votes cast in both tribes or nations shall be forthwith returned duly certified by the precinct officers to the national secretaries of said tribes or nations, and shall be presented by said national secretaries to a board of commissioners consisting of the principal chief and national secretary of the Choctaw nation, the governor and national secretary of the Chickasaw nation, and a member of the commission to the five civilized tribes to designated by the chairman of said commission; and said board shall meet without delay at Atoka, in the Indian Territory, and canvass and count the votes and make proclamation of the result, and if said agreement, as amended be so ratified, the provisions of this act shall then only apply to said tribes where the same do not conflict with the provisions of said agreement."

That, pursuant to the provisions of this section, an election was held in the manner therein provided on the 24th day of August, 1898, in which — votes were cast in favor of said agreement and — votes against it. Thereupon it was proclaimed by the persons designated in said section, on the — day of ——, that said agreement had been adopted; that by said agreement it was provided as follows:

"It is agreed that all the coal and asphalt within the limits of the Choctaw and Chickasaw nations shall remain and be the common property of the members of the Choctaw and Chickasaw tribes (freedmen excepted) so that each and every member shall have an equal and undivided interest in the whole; and no patent provided for in this agreement shall convey any title thereto. The reve-
21 nue from coal and asphalt, or so much as shall be necessary, shall be used for the education of the children of Indian blood of the members of said tribes. Such coal and asphalt mines as are now in operation and all others which may hereafter be leased and operated, shall be under the supervision and control of two trustees, who shall be appointed by the President of the United States, one on the recommendation of the principal chief of the Choctaw nation, who shall be a Choctaw by blood, whose term shall be for four years, and one on the recommendation of the governor of the Chickasaw nation, who shall be a Chickasaw by blood, whose term shall be for two years, after which the term of appointees shall be for four years. Said trustees, or any of them, may at any time be removed by the President of the United States for good cause shown. They shall each give bond for the faithful performance of their duties under such rules as may be prescribed by the Secretary of the Interior. Their salaries shall be fixed and paid by their re-

spective nations, each of whom shall make full reports of all his acts to the Secretary of the Interior quarterly. All such acts shall be subject to the approval of said Secretary.

All coal and asphalt mined in the two nations, whether now developed or hereafter to be developed, shall be operated and the royalties therefrom paid into the Treasury of the United States, and shall be drawn therefrom under such rules and regulations as shall be prescribed by the Secretary of the Interior.

All contracts made by the national agents of the Choctaw and Chickasaw nations for operating coal and asphalt, with any person or corporations which were, on April 23rd, 1897, being operated in good faith, are hereby ratified and confirmed, and the lessee shall have the right to renew the same when they expire subject to all the provisions of this act.

All agreements heretofore made by any person or corporation with any member or members of the Choctaw and Chickasaw nations, the object of which was to obtain such member or members' permission to operate coal or asphalt, are hereby declared void; provided, that nothing herein contained shall impair the rights of any holder or owner of a leasehold interest in any oil, coal rights, asphalt or mineral which have been assented to by act of Congress, but all such interests shall continue unimpaired hereby, and shall be assured by new leases from such trustees of coal or asphalt claims described herein, by applications to the trustees within six months after the ratification of this agreement, subject, however, to payments of advance royalties herein provided for. All leases under this agreement shall include coal or asphaltum or other mineral as the case may be in or under nine hundred and sixty acres, which shall be in a square as nearly as possible, and shall be for thirty years. The royalty on coal shall be fifteen cents per ton of two thousand pounds on all coal mined, payable on the 25th day of the month next succeeding that in which it is mined. Royalty on asphalt shall be sixty cents per ton payable same as coal: Provided, that the Secretary of the Interior may reduce or advance royalties on coal or asphalt when he deems it for the best interests of the Choctaws and Chickasaws to do so. No royalties shall be paid except into the Treasury of the United States as herein provided.

All lessees shall pay on each coal or asphalt claim at the rate of one hundred dollars per annum in advance for the first and second years; two hundred dollars per annum, in advance, for the third and fourth years; and five hundred dollars for each succeeding year thereafter. All such payments shall be treated as advanced royalty on the mine or claim on which they are made, and shall be a credit as royalty when each said mine *in* developed and operated, and its production is in excess of such guaranteed an-
22 nual advanced payments, and all persons having coal leases must pay said annual advanced payments on each claim whether developed or undeveloped; provided, however, that should any lessee neglect or refuse to pay such annual advanced royalties for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become

null and void, and the royalties paid in advance thereon shall then become and be the money and property of the Choctaw and Chickasaw nations.

In surface, the use of which is reserved to present coal operators, shall be included such lots in towns as are occupied by lessees' houses, either occupied by said lessees' employees, or as offices or warehouses; provided, however, that in those town sites designated and laid out under the provisions of this agreement where coal leases are now being operated and coal is being mined, there shall be reserved from appraisement and sale all lots occupied by houses of miners actually engaged in mining, and only while they are so engaged, and in addition thereto sufficient amount of land, to be determined by the town site board of appraisers, to furnish homes for the men actually engaged in working for the lessees operating said mines, and a sufficient amount for all buildings and machinery for mining purposes; and provided further, that when the lessees shall cease to operate said mines, then and in that event the lots of land so reserved shall be disposed of by the coal trustees for the benefit of the Choctaw and Chickasaw tribes.

That whenever the members of the Choctaw and Chickasaw tribes shall be required to pay taxes for the support of schools, then the fund arising from such royalties shall be disposed of for the equal benefit of their members (freedmen excepted) in such manner as the tribes may direct."

7.

That pursuant to the provisions of said agreement the governor of the Choctaw nation did heretofore nominate the defendant N. B. Ainsworth to be coal trustee, as in said agreement provided, and the governor of the Chickasaw nation did heretofore nominate the defendant L. C. Burriss to be coal trustee for the Chickasaw nation, as in said agreement provided; that the President of the United States has appointed said defendants N. B. Ainsworth and L. C. Burriss to be said coal trustees, and said defendants have qualified as such trustees in the mode provided by law.

That pursuant to the provisions of the said agreement the Secretary of the Interior has issued regulations governing mineral leases and other matters in the Choctaw and Chickasaw nations in the Indian Territory, by section 3 of which regulations it is provided as follows:

" It shall be the duty of the trustees to receive applications
23 from parties desiring to make leases of lands within the Choctaw and Chickasaw nations for the purpose of engaging in the mining of coal, asphalt and other minerals, to examine said applications and transmit the same, with the report of facts, to the United States Indian inspector stationed in the Indian Territory, and on receipt of authority from him for that purpose, to enter jointly into leases with all parties to whom the privilege of leasing lands in said nations for mining purposes shall be approved by him, in such form as shall be prescribed by the Secretary of the Interior."

That the defendants Wood and Elliott, as plaintiffs are informed and believed, intend as officers of the Ola Coal & Mining Company to make and will, unless restrained by this honorable court, make to said defendants, Ainsworth and Burriss, as trustees, application for a lease to said Ola Coal & Mining Company covering the coal claim or discovery belonging to plaintiffs, as above described and set out; that said trustees intend to receive said application and forward the same to the United States Indian inspector provided for in the regulations aforesaid, and, if authority be obtained from him, to execute a lease of said premises to defendant The Ola Coal & Mining Company or to defendants Woods and Elliott or one of them for its use and benefit, as aforesaid, and to forward said lease to the Secretary of the Interior for approval; that said defendants, Woods, Elliott, and The Ola Coal & Mining Company, since the adoption of the act of Congress approved June 28th, 1898, as aforesaid, have failed and refused and still fail and refuse to pay the royalties accruing to plaintiffs under and by virtue of the terms of their obligations to them, as aforesaid, as well as the royalties which had accrued and were payable under the terms of said lease prior to said date; that said royalties amount to the sum of eleven hundred dollars, which is due and payable; that said defendants, Woods, Elliott, and The Ola Coal & Mining Company, unless restrained by this honorable court, intend to pay and will pay the royalties due to plaintiffs under and by virtue of its lease aforesaid and the royalties hereafter accruing from the production of coal on said coal claim into the Treasury of the United States, and to wholly and totally disregard the rights of these plaintiffs to the same.

24 8.

That by the provisions of said agreement as above set out, and by the acts of the defendants Woods, Elliott, and The Ola Coal & Mining Company in refusing to pay the royalties due to plaintiffs, as aforesaid, because of the provisions of sections 16 and 18 of the act of Congress above set out, and their proposed payment unless restrained by the action of this court of said royalties into the Treasury of the United States, as aforesaid, plaintiffs are deprived of their property without notice, without hearing, and in violation of the fifth amendment to the Constitution of the United States, wherein it is provided that no person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation, and in violation of section 1 of the fourteenth amendment to the Constitution of the United States, by which it is provided that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

That by the action of the defendants Woods, Elliott, and The Ola Coal & Mining Company in making application for and in obtaining leases to the premises included in plaintiffs' lease to said defend-

ants, and by the action of said defendants, Ainsworth and Burriss, in receiving said application, transmitting the same to the United States inspector for the Interior Department in the Indian Territory, receiving his approval, and executing said leases and forwarding the same to the Secretary of the Interior, if such acts be permitted a cloud will be cast upon plaintiffs' right to said premises and upon their right to work the same by themselves or their lessees, and by the operation and enforcement of the provisions of the
25 agreement purporting to be between the United States and the Choctaw nation, as above set out, plaintiffs are deprived of property without hearing, without notice, without compensation, and without due process of law, and against such due process, in violation of the fifth amendment to the Constitution of the United States, providing that no person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation, and in violation of the provisions of the fourteenth amendment to the Constitution of the United States, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

9.

That the provisions of said agreement above set out, so far as they deprive plaintiffs of their right in the coal claim or discovery aforesaid and of their right to the royalties contracted to be paid by the defendants Woods, Elliott, and The Ola Coal & Mining Company for mining coal upon the same, and so far as they confer authority upon the Secretary of the Interior to make regulations under and by virtue of which the said N. B. Ainsworth and L. C. Burriss, trustees, are authorized to receive applications to lease said coal claim or discovery, or any part thereof, and to forward the same to the Indian inspector for the Interior Department in the Indian Territory, and to receive authority from him to execute such leases and to forward the same to the Secretary of the Interior for approval, authorize plaintiffs' property to be taken and applied to public use without the consent of the general council of the Choctaw nation thereunto first had and obtained, and without just compensation being first
26 made therefor, in violation of section 5 of article 1 of the constitution of the Choctaw nation, heretofore set out, and authorize plaintiffs to be disseized of their freehold liberties and privileges and deprived of their property otherwise than by the judgment of their peers or the law of the land, in violation of section 11 of article 1 of the constitution of the Choctaw nation, heretofore set out, and authorize the taking of plaintiff's property without due course of law, but against such due course of law, in violation of section 17 of article 1 of the constitution of the Choctaw nation heretofore set out.

That such provisions of the agreement impair the obligation of the contract arising and existing between plaintiffs and the Choctaw

nation under the facts heretofore set out, by virtue of the provision in its constitution with reference to the rights of coal discoverers heretofore mentioned, in violation of section 27 of article 1 of the constitution of the Choctaw nation.

That said provisions of the Choctaw constitution and the provisions thereof with reference to the rights of discoverers of coal or other minerals, as above set out, were made in pursuance of treaties of the United States authorizing same and expressly validating said constitutional provisions when enacted, as specially appears from the provisions of article 2 of the treaty of 1820 and article 7 of the treaty of 1855 and article 43 of the treaty of 1866, all of which articles have heretofore been set out; that the rights of plaintiffs arising under the customs, laws, usages, and constitution of the Choctaw nation authorized to be enacted and adopted by the treaties with the United States and reaffirmed and validated after enactment by said treaties are rights acquired and vested in and by virtue of the treaties and laws of the United States and not defeasible by legislation of the Congress of the United States
27 or of the Choctaw nation or otherwise than by due process of law after notice and hearing and with full compensation.

10.

Plaintiffs further aver that the purported agreement between the Choctaw nation and the United States was not adopted in mode or form known to the laws, for by section 11 of article 7 of the constitution of the Choctaw nation it is provided as follows:

"The general council shall have the power to pass such laws and measures as they shall deem expedient for the general good of the Choctaw people, provided, no law be passed or adopted contrary to the provisions of this constitution."

By section 1 of article 9 of said constitution it is provided as follows:

"Whenever a majority of the members of the general council assembled shall deem it necessary, they may propose an amendment or amendments to this constitution, which amendments shall be submitted by the national secretary, at least four months preceding the next regular election, at which the qualified voters shall vote directly for and against said proposed amendment or amendments, and if it shall appear that a majority of the qualified voters shall have voted in favor of such amendment or amendments, then the same may be incorporated as a part of this constitution at the next succeeding general council."

That the agreement aforesaid was never submitted to nor adopted by the general council of the Choctaw nation under the constitutional authority vested in them, nor was it proposed by the majority of the members of the general council as an amendment to the constitution, nor as such amendment submitted by the national secretary at least four months preceding the next regular election, to be voted on by the qualified voters of the Choctaw nation, but such election was held by virtue of a proclamation by the governors of the Choctaw and Chickasaw nations, acting without authority con-

ferred upon them by any law defining their duties as governors of said nations or pertaining to their respective offices, and at such election members of the Chickasaw nation were permitted to vote at voting places in the Choctaw nation and members of the
28 Choctaw nation to vote at voting places in the Chickasaw nation, whereby the opportunity for fraudulent practices and duplication of votes in such election was furnished and afforded, and by reason whereof it is not possible to know whether said agreement received a majority of the votes cast by the qualified voters of the Choctaw nation.

That such agreement affects the title to the land belonging to the Choctaw and Chickasaw people by grant from the United States and a patent executed in pursuance thereof, as well as the other property of the Choctaw and Chickasaw people, these plaintiffs inclusive; that by virtue of such agreement the property rights of the Choctaw and Chickasaw people in general and of these plaintiffs in their coal discovery, as above set out, in particular, were changed, modified, and in the latter case destroyed by an agreement against which nearly one-half of the votes cast were recorded, and which was submitted in accordance with none of the forms of procedure of the Choctaw or Chickasaw nation, as provided by their constitution and laws made in pursuance of treaties with the United States.

That these plaintiffs and the Choctaw people held and acquired their property rights subject to general powers of legislation on the part of the Choctaw nation, as limited and defined by the constitution and laws thereof, executed consistently with the Constitution and laws of the United States, and that such rights were not subject to be divested, changed, modified, or in any way impaired, except by due course of legislation enacted consistently with the constitution and laws of the Choctaw nation, as aforesaid, adopted in harmony with the Constitution and laws of the United States.

That said agreement having been adopted in manner and form otherwise than as provided by said constitution and laws of the Choctaw nation, and divesting and destroying, changing and impairing many of the rights of the plaintiffs as members of the Choctaw nation, and in particular destroying their rights of
29 property in the coal discovery aforesaid, was, because of the mode and form of its promulgation and adoption, not adopted by due course of law, but against said due course of law and in violation of the fifth and fourteenth amendments to the Constitution of the United States, as above set out; that by reason of this fact the regulations of the Secretary of the Interior, and the proposed action of the defendants Ainsworth and Burriss as trustees in executing the same by receiving applications of the defendants Woods, Elliott, and The Ola Coal & Mining Company for leases upon the coal claim or discovery of plaintiffs aforesaid, by obtaining authority from the inspector of the Interior Department to execute the same, and by executing the same and forwarding such lease to the Secretary of the Interior for approval, are acts without warrant in

law, which will entail great and irreparable injury to these plaintiffs for which they are entirely remediless at law.

11.

Plaintiffs further aver that said agreement, so far as it impairs, destroys, modifies, or changes the property rights of the citizens of the Choctaw nation and of these plaintiffs, is inoperative and void, because it does not rest upon the free consent of the people of the Choctaw or Chickasaw nations or a majority of their qualified electors or of any of its citizens; that the appearance of consent to said agreement, existing by reason of the fact that a majority of the votes at the election aforesaid were cast in its favor, is false, specious, and unreal, because the voters voting in favor of the same were compelled thereto by coercion and duress, exercised by the United States as follows:

By the act of Congress approved June 7, 1897, the jurisdiction of the courts of the Choctaw and Chickasaw nations as theretofore existing was taken away, and after January 1st, 1898, conferred upon the
30 United States courts in the Indian Territory, but by said act it was provided that said nations could avoid the effect of this provision by entering into agreement on or before January 1st, 1898, with the commission to the five civilized tribes theretofore appointed on the part of the United States to treat with said tribes; that commissions on behalf of said Choctaw and Chickasaw nations respectively were appointed by the authorities thereof, who met with said commission of the United States and framed the agreement aforesaid; that said agreement was submitted to the council of the Chickasaw nation, and by said council rejected; that such agreement was never submitted to the council of the Choctaw nation; that by the failure to adopt such agreement the jurisdiction of the courts of said nations was taken away by the operation of the act of Congress aforesaid and vested in the United States courts on and after January 1st, 1898.

That the members of said nations were deeply attached to their government with its courts and legislative and executive functions, and were wholly averse to surrendering the same or any part thereof, but preferred to lose the same rather than accept the provisions of said agreement; that after the jurisdiction of their courts had been taken away by operation of the act of June 7th, 1897, said agreement was amended and ratified by the Congress of the United States in the act of June 28, 1898, and directed to be submitted to the qualified electors of the said nations, as hereinbefore set out; that the said act of June 28, 1898, provided in section 26 thereof as follows:

"That on and after the passage of this act, the laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the court of the United States in the Indian Territory."

That by the act of June 7th, 1897, the jurisdiction to enforce all laws in the Indian Territory had become vested in the United States courts, which thereupon enforced and upheld the laws
31 of said nations whenever they were the basis of property rights, as said courts had done from their organization in

the Indian Territory; that by the provisions of this section such courts were forbidden to enforce at law or in equity the laws of the Choctaw or Chickasaw nation; that the effect of this provision was that the only courts in which the members of these tribes could assert their rights or seek for redress of injuries were forbidden to recognize any right based upon the laws theretofore controlling the members of said nations and defining their personal and property rights. By this situation the tenures of all holdings by citizens of the Choctaw and Chickasaw nations, the descent of property, the devolution of estates, and all the rights of property in whatever form arising or existing, as declared by the only law in which such rights had foundation or origin, were swept away by being rendered unenforcible in the only courts having jurisdiction of the parties.

By the same act of Congress which inhibited the enforcement at law or in equity of the laws of the Choctaw and Chickasaw nations by the United States court the agreement was resubmitted, and the citizens of said nations were enabled to secure the continued existence of their governments and their laws and to revest jurisdiction in their courts to enforce the laws by adopting such agreement, and thereby at the same time to avoid the disastrous consequences to personal and property rig[illegible] the anarchy with reference to the same necessarily created, if they failed to accept such agreement; that influenced by the desire to continue the government of the nations and the jurisdiction of their courts, and coerced by the suspension of all laws upon which their rights vested, the electors of said nations, against their will and inclination, in the absence of their free consent or desire, voted for said agreement, and by reason of the coercion and duress placed upon them, in manner and form as stated, said agreement, so far as it purports to rest upon the
32 consent of the Choctaw and Chickasaw nations, and to in anywise affect the property rights of the members of said nations and of these plaintiffs, and to authorize the acts proposed to be done thereunder by defendants, as before averred, is wholly inoperative, ineffectual, and void, for plaintiffs aver that the adoption of said agreement, secured as aforesaid*ed*, was not by due process of law, but against such due process of law, by reason whereof the same is in violation of the fifth and fourteenth amendments to the Constitution of the United States, so far as said agreement is made the basis for divesting property rights of plaintiffs under former laws vested and enjoyed.

12.

That from the time the commission of the United States to the five civilized tribes was created, the members of said tribes were continuously informed by said commission by private, public, and published utterances that unless said tribes made agreements changing the tenures of their land holdings and the rights of their respective governments the United States would do these things by the exercise of its own plenary powers without regard to the will or inclination of said tribes; that after the adoption of the act of Congress of June 28, 1898, and the ratification by the Congress of the

agreement aforesaid, the members of said Choctaw and Chickasaw nations were again told, in them manner aforesaid, by the members of said commission, that unless said agreement were adopted the United States would not only enforce the provisions of the act of June 28th, but would adopt more stringent and radical legislation affecting said tribes and the members thereof; that by these representations and statements the members of said tribes were further coerced and compelled against their will and without their consent or desire into voting for said agreement.

32*a* 12.

That the agreement aforesaid and all the provisions of the act of June 28th, 1898, not therein contained which impaired or affected the property rights of the Choctaw and Chickasaw nations and of the members thereof individually, and so far as they affected or impaired the rights of these plaintiffs in their coal claim aforesaid are inoperative and void because in said act and in said agreement and by the mode of their enactment and adoption Congress delegated its powers of legislation to the voters of the Choctaw and Chickasaw nations in violation of sections 1 and 7 of article 1 of the Constitution of the United States.

33 13.

Plaintiffs say that if defendants Elliott, Woods, and The Ola Coal & Mining Company are permitted, as they propose, to make application for lease of the coal claim or discovery aforesaid belonging to plaintiffs and to obtain leases therefor, plaintiffs' right in the premises will be clouded and they exposed to great and irreparable injury; that under the law as contained in article 16 of the act of June 28th, 1898, aforesaid, if plaintiffs claim or demand the royalties due from said defendants, or which may hereafter become due, they subject themselves to a fine of one hundred dollars for each claim or demand so asserted; that these penalties in the course of a few years will become great in amount and expose these plaintiffs to the necessity and the humiliation of defending charges of crime against the laws, as well as to the loss of their property in making defense; that if the defendants above named pay said royalties into the Treasury of the United States, as they propose, these plaintiffs will be without remedy, forasmuch as they are unable to sue the United States for the same; that if said defendants pay said royalties to an officer of the United States, in pursuance of said agreement, it is doubtful whether these plaintiffs can establish liability against them therefor; that in order to establish such liability for each recurring amount of royalty as it falls due they would be compelled to bring a multiplicity of suits.

14.

Wherefore they say that in view of the premises they are remediless at law, and seek the relief of this court of equity, and pray that the defendants The Ola Coal & Mining Company, James Elliott, and O. E. Woods as individuals and officers of said Ola Coal

& Mining Company, their agents, attorneys, employees, and servants, and each and every of them, be restrained from paying said
34 royalties now due these plaintiffs and which may hereafter become due them by virtue of the production of coal on said coal claim or discovery, as above described, into the Treasury of the United States, and that they and each of them, individually and officially, the agents, attorneys, employees, and servants of each and every of them, and all other persons, companies, and corporations, their agents, servants, and employees, be restrained from making application to the defendants Ainsworth and Burriss, coal trustees as aforesaid, in their individual or official capacity, for the lease of said coal claim or discovery hereinbefore described or any part thereof, and that said defendants, Ainsworth and Burriss, be restrained from receiving such application to lease said premises and from forwarding the same to the inspector of the Interior Department, with a statement of facts thereunto pertaining, for the purpose of obtaining his authority to execute the same, and from forwarding the same to the Secretary of the Interior, at Washington, and that the court here and now issue its temporary writ or order so enjoining defendants, and that upon final hearing they have judgment against the defendants The Ola Coal & Mining Company, O. E. Woods, and James Elliott for royalties due them by virtue of the production of coal on said coal claim or discovery, as aforesaid, and that they have judgment making perpetual the injunction against all of said defendants, as herein prayed for, and for all such other and further relief as in equity and under the facts they may be entitled to, and for costs of suit in this behalf expended.

YANCEY LEWIS,
J. H. GORDON,
Attorneys for Plaintiffs.

35 "EXHIBIT A."

Be it enacted by the general council of the Choctaw nation assembled: There shall be appointed by the principal chief, by and with the advice and consent of the senate, one competent person, to be known as national agent of the Choctaw nation, whose duty it shall be to contract for the sale of stone, coal, and timber of all kinds. Said national agent shall be commissioned, and before he enters upon the duties of his office shall take the oath of office prescribed in the constitution, and enter into bond with good and sufficient securities in the penal sum of ten thousand dollars, payable to the Choctaw nation, conditioned that he will well and truly discharge his duties in accordance with law; which bond shall be filed in the national secretary's office. Said national agent shall hold his office for two years unless sooner removed by the principal chief for malfeasance in office.

2. Said national agent in making contracts with parties for the sale of any of the articles herein mentioned, shall charge royalty as follows:

On —, 25 cents per barrel of 240 pounds.
On coal, one-half cent per bushel.
On stone, ten cents per cubic yard.
On walnut timber, $5.00 per thousand feet.
On cypress timber, $3.00 per thousand feet.
On ash timber, $2.00 per thousand feet.
On oak and pine timber, $1.00 per thousand feet.
On cottonwood timber, 75 cents per thousand feet.

Telegraph poles.

Cedar, 4 to 5 inch deep, 8 to 10 inch bottom, 26 feet long, 40 cents each.
Cedar, 6-inch top, 12-inch bottom, 26 feet long, 50 cents each.
Oak, 6-inch top, 12-inch bottom, 26 feet long, 25 cents each.
Oak, 4 to 5 inch top, 8 to 10 inch bottom, 26 feet long, 20 cents each.
Piling, cedar, 2½ cents per foot, running measure.
Piling, oak, 1 cent per foot, running measure.

36 Railroad cross-ties (bridge, hewn or sawed).

Oak (post, burr, white, red and black) and pine, 7½ cents each.
Cedar, bois d'arc, walnut, mulberry, sassafras and red or slippery elm, 25 cents each.
Black locust and coffee bean, 12½ cents each.

Railroad switch-ties.

Oak (post, white and burr) 25 cents each; oak, (red and black) 15 cents each; pine, 10 cents each.
Tan-bark, 75 cents for every tree peeled.
Cord-wood, 20 cents per cord.
Shingles, pine, 25 cents per thousand; cypress, 30 cents per thousand.

The above royalty on timber, shingles, and tan-bark shall be due and payable on all manufactured in the Choctaw nation; and any other timber not mentioned above, the national agent is authorized to make contracts for, on the best terms obtainable, by and with the consent of the principal chief; and all timber contracted by the national agent to be measured by scale measurement, shall be measured according to Doyle's rule of Scribner's book, and the royalty collected accordingly; provided, however, that the national agent is hereby instructed to make all contracts for furnishing ties to railroads with Choctaw citizens exclusively. All contracts made hereunder shall expire on the 31st day of December of each year, except contracts for mining coal and quarrying stone, which shall cover a period of six years; and all royalty accruing under the same shall be due and payable monthly.

3. The national agent shall not sell any timber or stone on any citizen's claim except by the consent of such citizen; provided, however, that all royalties arising from the sale of either, whether

taken from the claims of individuals or from the public domain, shall be turned into the National Treasury.

Before contracting with parties who are non-citizens, the national agent shall require them to enter into good bonds of ten thousand dollars to the United States, to be approved by the United States Commissioner of Indian Affairs, and conditioned
37 upon their faithful compliance with their contracts, and all contracts herein provided for shall be executed in accordance with section 2103 United States Revised Statutes; and no non-citizens shall engage in any business contemplated by this act, except a contract be first made with the national agent, and a permit be also obtained according to the laws of the Choctaw nation.

5. No Choctaw citizen shall engage in any business contemplated by this act until they have first made contracts with the national agent in accordance with the law, and shall have made good and sufficient bonds to the Choctaw nation in the penal sum of five thousand dollars, to be approved by the national agent, and sent by said national agent to the national secretary's office for file; said bond to be conditioned upon the faithful compliance of said citizens with said contracts. All violators of this law shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars in the discretion of the circuit court having jurisdiction, and upon the failure of said offenders to pay their fines in thirty days, they shall receive thirty-nine lashes on the bare back and be discharged from further obligations in the particular case; and district attorneys shall prosecute all persons indicted under this act, and if the fines are collected, said district attorneys shall receive one-tenth of the same for their services, and the balance shall be placed in the national treasury for public purposes.

The national agent shall have general supervision of the officers of inspector, district collectors and coal-weighers, and for that purpose he is hereby required to make frequent visits of inspection to the stations of the several coal-weighers, and see that their duties are properly performed; and if in his opinion a necessity therefor exists, to require the presence of the inspector and district collector at his office for explanations of their official acts and the
38 inspector and district collector shall make quarterly returns of all moneys collected by them to the national treasurer, and quarterly reports of the same to the national agent, with the sworn statement from the persons from whom the royalty was received; and the national agent shall examine the said reports and forward a quarterly abstract thereof to the principal chief for his information; and he shall also prepare an annual abstract of said reports and present the same with the quarterly report, and all vouchers thereto belonging, to the general council for examination and information.

7. In case of any irregularity in the office of inspector, district collectors, or coal-weighers, or of any material error or discrepancy in their reports, the national agent shall report the facts of the case, without delay, to the principal chief, and the national agent shall

also be required to visit the headquarters office of the railroad and coal companies and inspect their books and returns to ascertain if the report made to them correspond with the reports made to the Choctaw nation, and if it be necessary to obtain that power of inspection of said books and returns he shall insert a provision to that effect in their contracts.

8. The national agent shall receive for his services eight hundred dollars per annum, payable quarterly, upon the certificates of the principal chief to the auditor, who shall issue his warrants accordingly, and the treasurer shall pay the same, and said national agent shall not be allowed any funds besides his salary for contingent expenses.

39 "EXHIBIT B."

This contract, made and entered into in duplicate at Atoka, I. T., by and between W. H. Harrison, national agent of the Choctaw nation in behalf of said nation, commissioned as such by Green McCurtain, principal chief of the Choctaw nation, on the 24th day of October, 1896, in pursuance of an act of the general council of said nation approved November 5, 1880, and B. F. Byrd, national agent of the Chickasaw nation, in behalf of said nation, commissioned as such by R. M. Harris, governor of the Chickasaw nation, on the 11th day of September, 1896, in pursuance of an act of the Chickasaw legislature approved October 18, 1876, parties of the first part, and O. E. Woods, trustee, party of the second part, witnesseth:

That whereas said party of the second part desires to engage in the business of mining, prospecting and boring for coal within the limits of the Choctaw and Chickasaw nations, Indian Territory, it is hereby agreed by the parties of the first part that the party of the second part shall so engage on the condition that on all coal mined within said Choctaw and Chickasaw nations said party of the second part shall pay monthly to the properly authorized officers of the Choctaw and Chickasaw nations a royalty of one-half (½) of one cent per bushel of eighty-five pounds for all coal passing over a one-inch screen, said payment to be made during the month succeeding the month in which the coal is mined, and in the proportion of three-fourths to the Choctaw nation and one-fourth to the Chickasaw nation, to be applied under the direction of their respective governments to purposes of education and such other objects as may be best calculated to promote and advance the welfare and happiness of said nations and their people. In consideration of the sum thus to be paid, full and free permission is hereby given said party of the second part to do all and whatever may be

40 necessary for the successful mining and shipping of coal from mines in said Choctaw and Chickasaw nations, and protection is to be afforded to said party of the second part to the limit of the authority of the national agents aforesaid against interference or stoppage, and in the enjoyment of privileges herein granted; provided that the rights of individuals citizens shall be respected.

Said party of the second part shall provide suitable and conve-

nient facilities for weighing coal mined at all said mines that the weighers for said nations may ascertain the weights of all coal so mined. Said party of the second part shall give precedence to all orders of Choctaw and Chickasaw citizens and merchants and licensed traders in said Choctaw and Chickasaw nations for coal, over other persons, companies or corporations not resident in said Choctaw or Chickasaw nation, at the lowest regular prices at the mines or on cars or wagons for transportation, and shall also furnish coal to all Indians and authorized Indian traders in the Indian Territory to be shipped to any railroad station or other point in said Territory as the purchaser may require, filling all orders therefor according to the priority in the receipt of the same and at prices not exceeding the lowest regular price charged to other customers at the mines or on cars for transportation.

Said party of the second part shall furnish a bond in the sum of ten thousand dollars to the United States for the use and benefit of the Choctaw and Chickasaw nations, to be approved by the principal chief of the Choctaw nation and to be conditioned upon the regular and faithful observance of this contract and of the laws of the Choctaw and Chickasaw nations which are or may be applicable to said party of the second part during the existence of this contract.

In order to enable the national agents aforesaid to know that this contract is being lived up to, it is hereby further agreed that they shall have access to the books of said company in so far as
41 they show the quantity of coal mined. It is hereby agreed that the failure of the party of the second part to observe all the stipulations herein shall make this contract void. This contract shall be in force (to date from January 1st, 1897,) and shall expire by limitation on the 31st day of December, 1902.

In witness whereof, the said W. H. Harrison, national agent of the Choctaw nation, and —— ——, national agent of the Chickasaw nation, have by virtue of the hereinbefore-recited authority conferred upon us respectively by the Choctaw and Chickasaw nations, hereto subscribed our hands and affixed our private seals (there being no public ones) and in pursuance of a resolution of the Choctaw council passed on the 5th day of November, 1880, the corporate seal of said corporation is hereto affixed, and these presents duly signed by the president and secretary thereof, the first day of January, 1897.

W. H. HARRISON,
National Agent Choctaw Nation.
B. F. BYRD,
National Agent Chickasaw Nation,
By —— ——.

42 "EXHIBIT C."

Whereas there is a growing necessity for increase of the funds of the Choctaw nation to meet the demands of education and all elevating agencies; and whereas those minerals which are undiscov-

ered in the bowels of the earth can be of no possible benefit to the present or future generations unless they find development and are operated; therefore,

Be it enacted by the general council of the Choctaw nation assembled: That any citizen of the Choctaw nation who shall discover lead, iron or other metal, or mineral other than coal, shall be allowed the exclusive privilege of working the same within a radius of one mile from the point of discovery, provided that he shall duly record the same in the office of the county clerk of the county wherein the same metal or mineral may be located.

Provided further that he shall pay a royalty on the same to the Choctaw and Chickasaw nations of six per cent., three-fourths to the Choctaw and one-fourth to the Chickasaw nation of said six per cent. of the value of the metal or mineral when it is prepared for the general market; and provided further, that he shall be required to enter into contract with the national agent.

43 "EXHIBIT D."

This agreement, made and entered into this 8th day of December, 1896, by and between Loran Riddle, R. O. Edmonds, and Mike Gleason, citizens of the Choctaw nation, parties of the first part, and O. E. Woods, trustee, party of the second part,

Witnesseth, that the said parties of the first part for and in consideration of the sum of one dollar to them in hand paid, receipt of which is hereby acknowledged, and for other valuable consideration, has granted and leased, and does hereby grant and lease unto the party of the second part, his successors and assigns, their certain coal claim, located and described as follows, to wit:

The point of discovery being east of Wilburton at mile post 184, and about two hundred and fifty yards south of said mile post, the said coal claim and lease extending one mile in every direction from said point of discovery.

It is further understood and agreed that the said party of the second part shall have the exclusive right and privilege to mine and take coal from said claim, and that he shall have the right to erect such buildings and machinery, and shall have such inclosures as may seem and be deemed necessary for the benefit of the said party of the second part.

The said party of the second part further agrees to keep a true and correct account of all coal mined upon and taken from the claim above described, and pay to the party of the first part a royalty of one-fourth of one cent per bushel of eighty-five pounds on all coal taken from said claim which shall be passed over a one-inch screen; and that the party of the second part shall pay to the lawful authorities of the Choctaw and Chickasaw nations all royalties on coal as demanded by the laws of said nations.

That the parties of the first part for themselves, their heirs, executors and assigns, further agree that this lease shall be
44 for a period of six years, with privilege of renewal at the expiration of that time, and with the further privilege of

renewal on the same terms and conditions for five consecutive terms of six years each, provided always that said party of the second part shall faithfully perform the obligations and covenants of this agreement.

It is further understood and agreed by the party of the second part that he shall commence operations on said coal claim within ninety days from the signing of this agreement, and that in the event of the failure to begin operations within that time, the said party of the second part shall pay to the parties of the first part, royalty at the rate of one-fourth of one cent per bushel, on one car of coal, fifty thousand pounds to the car, for each day from the date of the expiration of the aforesaid ninety days to the beginning of work upon said claim, and up to the time that the output on said claim shall be one car, as aforesaid, or more. And that thereafter, royalty at the rate stipulated of one-fourth of one cent per bushel on all coal mined shall be paid to the party of the second part, his successors or assigns.

It is further agreed and understood that in the event work is not commenced upon said claim within six months after the signing of this lease, the lease shall become void and of no effect. It is further agreed that if work upon said claim shall cease for a period of six months, the said lease shall be considered foreclosed and revert to the owners of said claim. It is further agreed that the royalty shall be paid to the parties of the first part in equal amounts.

Witness our hands and seals this 8th day of December, 1896.

LORIN RIDDLE.
R. O. EDMONDS.
MIKE GLEASON.
O. E. WOODS, *Truslee*,
Per W. E. HAILEY, *Att'y.*

45 INDIAN TERRITORY, }
Central District. }

Before me, the undersigned authority, this day personally appeared W. H. Ansley, M. H. Gleason, and R. O. Edmonds, plaintiffs in the above-entitled cause, who, being by me first duly sworn, on oath depose and say that the matters and things stated in said complaint are true and correct as they verily believe.

W. H. ANSLEY.
M. H. GLEASON.
R. O. EDMONDS.

Subscribed and sworn to before me this 31st day of March, 1899.

BERTHA L. FREDERICK,
[SEAL.] *Notary Public.*

Endorsed: No. 2224. W. H. Ansley *et al. vs.* N. B. Ainsworth *et al.* Amended complaint. Filed in open court this 31st day of March, 1899. E. J. Fannin, clerk. Yancey Lewis, J. H. Gordon, att'ys for plaintiffs.

On January 20th, 1899, there was filed in the office of the clerk of said court, at South McAlester, a waiver of summons and entry of appearance by said defendants, which is in words and figures as follows, to wit:

In the United States Court, Central District, Indian Territory.

W. H. ANSLEY ET AL., Plaintiffs,
vs
N. B. AINSWORTH ET AL., Defendants.

Appearance.

On this day come the defendants, N. B. Ainsworth, L. C. Burriss, James Elliott, O. E. Woods, and The Ola Coal & Mining
46 Company, and, waiving summons herein, enter an appearance in the above-entitled cause and agree that the court may hear and determine the same and render final judgment upon the merits at the present term of this court.

N. B. AINSWORTH,
L. C. BURRISS,
By JOHN H. WILKINS,
United States Attorney, Representing said Defendants ex Officio.
JAMES ELLIOTT,
O. E. WOODS,
OLA COAL & MINING COMPANY,
By W. J. HORTON, *Their Attorney.*

Endorsed: 2224. W. H. Ansley *et al. vs.* N. B. Ainsworth *et al.* Entry of appearance. Filed in open court Jan'y 20th, 1899. E. J. Fannin, cl'k.

On the 31st day of March, 1899, there was filed in said cause in the office of the clerk of said court a demurrer by the defendants, which is in words and figures as follows, to wit:

In the United States Court, Central District, Indian Territory.

W. H. ANSLEY ET AL.
vs.
N. B. AINSWORTH ET AL.

Demurrer.

Now, on this day, come the defendants, N. B. Ainsworth, L. C. Burriss, James Elliott, O. E. Wood, and The Ola Coal & Mining Company, and demur to the amended complaint herein, and for grounds therefor say:

47 First. That the complaint does not state facts sufficient to constitute a cause of action.

Second. That the complaint does not state facts sufficient to constitute an equitable cause of action.

JOHN H. WILKINS,
United States Attorney, Representing Coal Trustees ex Officio.
W. J. HORTON,
Attorney for Ola Coal & Mining Company.

Endorsed: 2224. W. H. Ansley *et al. vs.* N. B. Ainsworth *et al.* Demurrer. Filed in open court this 31st day of March, 1899. E. J. Fannin, cl'k.

On March 31st, 1899, the same being a day of the regular December, 1898, term of said court, among the proceedings had were the following:

Decree.

W. H. ANSLEY ET AL., Plaintiffs,
vs.
N. B. AINSWORTH ET AL, Defendants. } No. 2224.

On this 31st day of March, 1899, the above-entitled cause came regularly on for hearing, the defendants, N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and The Ola Coal & Mining Company, having heretofore entered their appearance and agreed that the cause might be heard and finally determined at the present term of court.

Plaintiffs, by leave of court first obtained, filed an amended complaint herein, and defendants filed demurrer thereto.

48 The court, after hearing argument of counsel for plaintiffs and defendants respectively and being fully advised in the premises, is of opinion that plaintiffs' amended complaint is without equity, and doth sustain defendants' demurrer to same; and plaintiffs declining to plead further herein, it is by the court considered, ordered, adjudged, and decreed that said amended complaint, wherein W. H. Ansley, M. H. Gleason, and R. O. Edmonds are plaintiffs and N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and The Ola Coal & Mining Company are defendants, be, and the same is hereby, dismissed; and it is further considered, adjudged, and decreed by the court that defendants have and recover of plaintiffs their costs in this behalf expended, for which they may have execution; to which action of the court in sustaining said demurrer and entering this decree plaintiffs in open court except.

49 (*Assignment of Errors.*)

In the United States Court for the Central District of the Indian Territory, at South McAlester.

W. H. ANSLEY ET AL., Plaintiffs,
vs.
N. B. AINSWORTH ET AL., Defendants. } No. 2224.

Assignment of errors.

The plaintiffs in this action, in connection with their petition for appeal, file the following assignment of errors, which they aver occurred upon the trial of this cause and in the decree rendered therein, to wit:

First. The court erred in holding that the amended complaint in this cause does not state facts sufficient to constitute a cause of action.

Second. The court erred in holding that the amended complaint in this cause does not state facts sufficient to constitute an equitable cause of action, and in holding that the amended complaint in this cause is without equity.

Third. The court erred in sustaining the demurrer of the defendants to plaintiffs' amended complaint.

Fourth. The court erred in rendering judgment in favor of the defendants in this cause upon the demurrer filed herein.

YANCEY LEWIS AND
J. H. GORDON,
Attorneys for Plaintiffs.

Endorsed: W. H. Ansley *et al. vs.* N. B. Ainsworth *et al.* Assignment of errors. Filed September 19, 1899. E. J. Fannin, clerk.

(*Petition for Appeal.*)

In the United States Court for the Central District of the Indian Territory, at South McAlester.

50 W. H. ANSLEY, M. H. GLEASON, and R. O. EDmonds, Plaintiffs,
vs.
N. B. AINSWORTH, L. C. BURRISS, O. E. WOODS, JAMES Elliott, and Ola Coal & Mining Company, Defendants. } No. 2224.

Petition for appeal and order granting same.

The plaintiffs in the above-entitled cause, deeming themselves aggrieved by the decree made and entered in said cause on the 31st day of March, 1899, hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the asssignment of errors filed herewith, and pray that this appeal may be

allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

YANCEY LEWIS AND
J. H. GORDON,
Attorneys for Plaintiffs.

The appeal prayed for in the foregoing application is allowed and bond for costs fixed at $300.00 this 19 day of September, 1899.

WM. H. H. CLAYTON,
Judge of the United States Court for the Central District of the Indian Territory.

Endorsed: No. 2224. W. H. Ansley *et al. vs.* N. B. Ainsworth *et al.* Petition for appeal. Filed September 19, 1899. E. J. Fannin, clerk. Lewis & Gordon, att'ys for plaintiffs.

(*Bond on Appeal.*)

In the United States Court for the Central District of the Indian Territory, at South McAlester.

51 W. H. ANSLEY ET AL., Plaintiffs,
vs.
N. B. AINSWORTH ET AL., Defendants. } No. —.

Bond on appeal.

Know all men by these presents that we, W. H. Ansley, M. H. Gleason, and R. O. Edmonds, as principals, and Allen Wright, Harry J. Bettes, and James H. Gordon, as sureties, residents in the central district of the United States court for the Indian Territory, are held and firmly bound unto N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and the Ola Coal & Mining Company in the sum of three hundred dollars, to be paid to the said N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and the Ola Coal & Mining Company; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 19 day of September, A. D. 1899.

Whereas the above-named W. H. Ansley, M. H. Gleason, and R. O. Edmonds, as principals, have perfected an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the United States court for the central district of the Indian Territory, sitting at South McAlester:

Now, therefore, the condition of this obligation is such that if the above named W. H. Ansley, M. H. Gleason, and R. O. Edmonds shall prosecute said appeal to effect and answer all damages and

costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in fully force and virtue.

52

W. H. ANSLEY,
M. H. GLEASON,
R. O. EDMONDS,
By YANCEY LEWIS AND
J. H. GORDON,
Their Attorneys.
ALLEN WRIGHT.
HARRY J. BETTES.
JAMES H. GORDON.

Sealed and delivered in the presence of—
E. T. BRADLEY.
O. H. GALBRAITH.

Approved by—
WM. H. H. CLAYTON,
Judge of the United States Court for the Central District of the Indian Territory.

Endorsed: No. 2224. W. H. Ansley *et al. vs.* N. B. Ainsworth *et al.* Bond on appeal. Filed September 19, 1899. E. J. Fannin, clerk. Lewis & Gordon, att'ys for plaintiffs.

(*Citation.*)

THE UNITED STATES OF AMERICA, *ss:*

To N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and the Ola Coal & Mining Company, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, on the 19 day of October, 1899, pursuant to an appeal filed in the clerk's office of the United States court for the central district of the Indian Territory, sitting at South McAlester, Indian Territory, wherein W. H. Ansley, M. H. Gleason, and R. O. Edmonds are appellants and N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and The Ola Coal & Mining Company are appellees, to show cause, if any there be, why the judgment rendered against the said

53 appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in their behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 19 day of Sept., in the year of our Lord one thousand eight hundred and ninety-nine.

WM. H. H. CLAYTON,
Judge of the United States Court in and for the Central District of the Indian Territory.

I hereby accept service of the within citation this 19 day of September, 1899.

N. B. AINSWORTH,
L. C. BURRISS,
By J. H. WILKINS,
U. S. Att'y, Representing said Appellees ex Officio.
JAMES ELLIOTT,
O. E. WOODS,
OLA COAL & MINING COMPANY,
By W. J. HORTON, *Their Attorney.*

Endorsed: No. 2224. W. H. Ansley *et al. vs.* N. B. Ainsworth *et al.* Citation. Filed September 19, 1899. E. J. Fannin, cl'k. Lewis & Gordon, att'ys for plaintiffs.

UNITED STATES OF AMERICA, }
Central District of the Indian Territory. }

I, E. J. Fannin, clerk of the United States court for the central district of the Indian Territory, do hereby certify that the foregoing is a true and correct transcript of the record, proceedings, and papers filed in my office in the case of W. H. Ansley *et al. versus* N. B. Ainsworth *et al.*, which case has been appealed to the Supreme Court of the United States by the claimants herein.

54 In testimony whereof I have hereunto set my hand and seal of office, at South McAlester, in said district, this 23d day of September, A. D. 1899.

{ Seal United States Court in the Indian Territory, Central District. }

E. J. FANNIN, *Clerk.*

55 In the Supreme Court of the United States.

W. H. ANSLEY, M. H. GLEASON, and R. O. Edmunds, Appellants,
vs.
N. B. AINSWORTH, L. C. BURRISS, and OLA Coal and Mining Company, Appellees.
} No. —. Stipulation.

It is agreed that the accompanying opinion is a true and correct copy of the opinion filed by the judge of the United States court for the central district of the Indian Territory upon the trial of the above-entitled cause in said court, and that the same may be attached to and made a part of the record of said cause now on file in the Supreme Court by the clerk of said court, and that the same may be printed as a part of the record in said cause.

Witness our hands this 18th day of January, 1900.

YANCEY LEWIS,
J. H. GORDON,
Attorneys for Appellants.
W. J. HORTON AND
J. W. McLOUD &
J. H. WILKINS, *U. S. Attorney,*
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56 In the United States Court for the Central District of the Indian Territory.

W. H. ANSLEY, M. H. GLEASON, and R. O. EDMUNDS, Complainants,
vs.
N. B. AINSWORTH, L. C. BURRIS, and OLA COAL & MINING CO., Defendants.

Opinion.

CLAYTON, *Judge:*

The facts of this case as set out in the complainants' bill, so far as is necessary to state them, are: That the plaintiffs, who are citizens of the Choctaw nation, on the 7th day of November, 1890, prospected for and discovered, at great expense to themselves, the coal claim or mine in controversy, and did open the same and have ever since either operated or caused the same to be operated and worked; that at the time of their discovery no person was living upon or claiming any right to the possession of the tract claimed by them, nor had any coal theretofore been found or discovered upon it.

That afterward, to wit, on the 8th day of December, 1896, the plaintiffs by their written agreement, which is made an exhibit to the bill, did lease the said coal claim to the defendant O. E. Woods for a period of six years, with right of renewal, upon the terms of the original lease, for five consecutive times, and that the said O. E. Woods thereafter, by an arrangement and agreement with the defendant Ola Coal & Mining Company, authorized said company to mine coal within the limits of the said coal claim.

That the other defendants, Messrs. Ainsworth and Burris, are coal trustees, appointed by the President of the United States by virtue of and in accordance with an act of Congress entitled "An act for the protection of the people of the Indian Territory, and for other purposes," approved June 8, 1898. So much of this act as is necessary for the purposes of this case is set out and pleaded in the plaintiffs' bill, which, among other things, avers that the defendants
57 Wood and The Ola Coal and Mining Company, disregarding the right of plaintiffs, are about to enter into a contract with the said trustees for the lease of the aforesaid coal claim, as provided for in the said act of Congress, and that the said trustees are about to receive and accept the same and forward it to the Secretary of the Interior for his approval, and thereby to cast a cloud on the title of plaintiffs to and in the said coal claim, and, in effect, to divest from them their right and title to the same, and they pray for an injunction restraining defendants from entering into the said contract of lease.

The plaintiffs base their title on sec. 18 of art. VII of the constitution of the Choctaw nation, which is as follows:

"Any citizen of this nation who may find any mine or mines, or mineral water, shall have exclusive right and privilege to work the same, so long as he may choose, within one mile in any direction

from his works or improvements, provided, however, he does not interfere with the rights of the former settler."

The plaintiffs contend, first, that by virtue of the aforesaid provision of the constitution of the Choctaw nation and certain acts of the legislature of that nation, hereafter to be noticed, and the laws of the United States and the treaties of the General Government with the Choctaw nation they obtained in and to this mine a vested right, and that the aforesaid act of Congress, by virtue of which the new lease is attempted to be made, is as to them and their rights unconstitutional, because if carried into effect it will divest them of this vested right to operate it so long as they may choose to do so.

They contend, second, that the act of Congress of June 8, 1898, commonly known as the Curtis bill, was not constitutionally enacted, in this, that by engrafting into the act of Congress what is known as the Atoka agreement and submitting the question of its ratification to a vote of the Choctaw people, so that in the event it should be ratified by them it should stand as the law as a
58 part of that act, and in the event it should not be so ratified that it should be expunged from the act, and the statute without the provision of the agreement should stand as the law, was in effect to delegate the legislative power of Congress to the Choctaw people.

Their third contention is that that act, stripped of the Atoka agreement, would have the effect of taking from the Choctaw people their government and many of their most cherished and sacred rights as theretofore exercised and enjoyed by them, and that the Atoka agreement was not satisfactory to them, but because of the fact that the only alternative presented to them was to accept the one or the other they were coerced into accepting that which was to them the least objectionable; that the agreement having been presented to them for their acceptance or rejection, with the condition that if rejected the Curtis bill, with, to them, all its objectionable features, would without their consent be forced upon them, was such a coercive act upon the part of Congress as to render its ratification void when done under these circumstances.

I will consider these questions in inverse order from that stated above.

The demurrer concedes the allegation that Congress passed the act of June 8, 1898, for the purpose of coercing the people of the Choctaw nation into ratifying the Atoka agreement, and that thereby, acting under this coercive influence, the people by their votes ratified this agreement when they otherwise would not have done so. Does this render the agreement void? Without passing upon the question as to whether the facts stated would amount to such duress as that it would avoid the agreement, considering it as a contract between individuals, after a full consideration of the authorities, I am of the opinion that in this kind of a case the court cannot go behind the act of Congress to inquire into the question whether or not it was procured by duress or fraud and declare it inop-
59 erative for that reason. There is no general law investing courts with this power, and it can only be done in special

cases when by an act of Congress it has disclaimed its decision as a political question for the legislative department to decide and has enjoined it upon the courts as one purely judicial. U. S. *v.* Arredonda, 31 Pet., 691.

In the case of The United States *v.* Old Settlers, etc., 148 U. S., 466, the court was asked to go behind and annul a treaty on the ground of fraud and duress in its execution. Chief Justice Fuller, speaking for the court, after reviewing the case of The United States *v.* Arredonda, *supra*, says:

"It will be perceived that that decision is not authority for the proposition that a court may be clothed with power to annul a treaty on the ground of fraud or duress in its execution; nor does any such question arise in the case before us. There is nothing in the jurisdictional act of February 25, 1889, inconsistent with the treaty of 1846 (or any other), and nothing to indicate that Congress attempted by that act to authorize the courts to proceed in disregard thereof. Unquestionably a treaty may be modified or abrogated by an act of Congress, but the power to make and unmake is essentially political and not judicial, and the presumption is wholly inadmissible that Congress sought in this instance to submit the good faith of its own action or the action of the Government to judicial decision by authorizing the stipulation in question to be overthrown upon an inquiry of the character suggested, and the act does not in the least degree justify any such inference."

The courts have no general power to question the *bona fides* of an act of Congress. If such power existed, it would necessarily devolve upon the courts to take proof and inquire into the motives and the conduct of individual members of that department of the Government to ascertain whether or not members of Congress in advocating this measure or that, and in casting their votes, were actuated by good or bad motives. Of course, in a government like ours, with its co-ordinate and independent departments, this could not be tolerated. The legislative department of the Government is so far independent of the judicial department that its
60 motives for its legislative acts, if otherwise valid, cannot, without its express consent, be inquired of by the courts for the purpose of annul-ing them in any of their provisions. I conclude, therefore, that this court has no power conferred upon it to determine the question whether the Atoka agreement would or would not have been ratified by the Choctaw people but for the provision of the act of Feb. 8, 1898. The courts must presume that the act was passed lawfully, and cannot impugn the motives of Congress.

But if it were conceded that the agreement is void because of duress, or for any other reason in the procurement of it, the plaintiffs in this case would be in no better attitude than if it were held to be valid, because that part of the act embraced in the agreement was the only thing submitted to the Choctaws and Chickasaws for their approval or rejection; and it being a separate and independent part of the statute, the act is divisible, so that if the agreement is held to be unconstitutional and void because it was procured by duress or

because not constitutionally enacted, the other part of the act not tainted with this vice, being whole and complete in itself and not dependent upon the agreement in any of its parts, would still remain as the law. To show that the act is divisible, and that the agreement is distinct and separate from the other parts of the act, it is only necessary to consider that the agreement, with the other parts of the statute not in conflict with it, was to be the law if ratified, and if not ratified the original act stripped of the agreement was to be the law. It presented two distinct systems—the one applicable to a state of facts which might be brought into existence only by the consent of the Choctaw and Chickasaw people; the other applicable to the then existing conditions, and which, without their consent, would necessarily continue to exist. If the act applicable to one of these conditions is unconstitutional and void, and the other is valid, the whole act will not fall because of that;
61 that which is valid will be declared to be the law. Cooley Const. Lim., 211–214.

The plaintiffs seek to enjoin the defendants from leasing certain coal mines to which they claim title, and if they have not a vested right in and to the mines the Atoka agreement, if valid, divests them of whatever claim they may have, and the lease would be lawful. But the 13th, 16th, and 18th sections of the original act has the same effect. By the 16th and 18th sections it is made a misdemeanor for any one to demand or receive or to pay royalties on coal except into the United States Treasury for the use of the whole tribe. The statute as clearly and as certainly divests the plaintiffs of their claim to the mines as does the agreement, and unless he is in an attitude to show that both are void or that for other reasons they do not apply to his case he is without grounds to maintain his suit.

And this applies as well to the second contention, that the agreement is void because of the fact that it was submitted to the two tribes for their ratification, Congress thereby delegating its legislative power to them. If this were conceded, it would not help the plaintiffs' case because it was only the agreement that was submitted, and that would be the only part of the statute which would be affected by the unconstitutional method of its passage, and, as before stated, if it should be declared void, the balance of the statute would stand, and as it contains the same provisions, as far as they pertain to this case, the plaintiffs' title would be left in the same condition as if the agreement were valid.

But I am of the opinion that under all of the circumstances of this legislation the mere fact that the agreement, after amended and ratified by Congress and engrafted into the act, was submitted to the two tribes for their ratification, was not such a delegation of the legislative powers of Congress as to render it void.

Taking the statute as a whole, it was the evident intention of Congress, first, to secure a partition of the lands of the two tribes
62 to their individual members; secondly, to establish and provide municipal government for cities and towns and to secure title to the inhabitants to the lands on which their homes and busi-

ness houses should be built; and, third, to place the coal and other minerals of the tribes in the hands of an officer of the Federal Government, to be managed and controlled by him, to the end that there might be a fair and equal distribution of this source of wealth among the people of these nations.

Because of the title and tenure by which these Indian lands were held, this legislation was impossible without their consent. They hold their lands by a fee-simple title. They hold them by a tenancy in common. Congress had no constitutional power to say to them, "You shall partition your lands and change the tenure of your holdings." It could not require them to sell to white men the lands to be embraced within the limits of the contemplated cities and towns, nor could it take from them the custody and control of their mines. Before this could be done their consent, because of the title to their realty, was an absolute necessity. It was an event that must happen before any law that Congress might pass to this end could have any constitutional force. An agreement, substantially the one engrafted in the act, had already been drafted and agreed to by commissioners fully authorized by the Government of the United States and these two Indian nations. It, however, had not been ratified by either. Congress, looking forward to a consummation of its purposes, amended the agreement in a few unimportant particulars, and as thus amended ratified it and engrafted it into the act and passed it into a law. In this act the legislative will of Congress was fully and completely expressed, and there was nothing left to prevent it from becoming operative as a law but a certain impediment over which Congress had no control and which could only be removed by the Indians themselves by a vote of their people. This impediment was not the necessity that they should consent to the legislation,

but that before such legislation could become operative they
63 should consent to a change of the tenure and title by which

they held their lands, and a surrender of the custody and control of their mines, which, under the scheme, they were to do by a ratification of the agreement. This title to their lands of the Indians of the five civilized tribes has for many years stood up as an impregnable barrier against needed and desired legislation. Every time that Congress would attempt to legislate in relation to the condition here it would run up against it and find itself thwarted. The whole object of the agreement was to place the title in such a condition as that this legislation could be had. The power conferred by Congress on the commission to the five civilized tribes to bring about this agreement was for this purpose. Congress, by act of March 3, 1871, had divested these Indian tribes and the United States of the power to regulate these matters by treaty, and had left it solely in the hands of Congress. Had the agreement been executed by treaty, as it could have been done before the passage of the aforesaid act, and before its ratification Congress, anticipating that it would be done, had passed the act dependent upon the ratification of the treaty, to go into effect if ratified, and if not to be void as a statute, there is no doubt but that it would have been lawful

This has often been done by Congress in its dealings with foreign nations, and its power to do so has always been upheld. Since the right to agree by treaty has been taken away from them and all of these matters have been submitted to Congress, why may it not pursue the same course.

The matter referred to the Indians was one solely within their power to determine. Congress could not constitutionally divest them of the title to or control over their realty; this was a necessity, however, in order that the legislation should take effect. Congress having no legislative power to do this, how can it be said that it delegated its legislative powers by referring the question to those in whom it alone vested? A power that does not exist cannot
64 be delegated. The ratification of the agreement was not a legislative act. Congress could not do it for them; they must do it for themselves. The act of ratification was simply contractual; it was the culmination of long-pending negotiations between them and the Federal Government. While it is true that it had the effect of giving force to a statute and subjecting them to its operation, which would otherwise have been nugatory, yet the thing submitted to them was the agreement and not the statute. Would they enter into the contract? If so, the statute would become operative as to them. If not, it would not.

Congress was legislating in view of the contingency that they would consummate the agreement that it, Congress, had already agreed to, and when this should be done there would be such a change of circumstances as would give to it the right to look forward, and, in anticipation of the happening of the event, to legislate in view of that contingency.

Legislation of a conditional character, when its force is to depend upon the happening of some future event or upon some future change of circumstances, is not unconstitutional.

"The event or change of circumstances on which a law may be made to take effect must be such as, in the judgment of the legislature, affects the question of the expediency of the law—an event on which the expediency of the law in the opinion of the lawmakers depends. On this question of expediency the legislature must exercise its own judgment definitively and finally. When a law is made to take effect upon the happening of such an event, the legislature in effect declare the law inexpedient of the event should not happen, but expedient if it should happen. They appeal to no other man or men to judge for them in relation to its present or future expediency. They exercise that power themselves, and then perform the duty which the Constitution imposes upon them." Cooley Const. Lim., 144.

In view of this legislation, what greater change of circumstances could possibly have occurred than that which happened by the ratification of the agreement?

65 The language of the act submitting the agreement to a vote of the people is as follows:

Section 32, which is the last section of the act, except one, which

by similar language submits an agreement to the Creeks for their ratification, provides:

"That the agreement made by the commission to the five civilized tribes with the commissioners representing the Choctaw and Chickasaw tribes of Indians on the twenty-third day of April, 1897, as herein amended, is hereby ratified and confirmed, and the same shall be of full force and effect, if ratified before the first day of December, 1898, by a majority of the whole of the votes, etc." Then follows the directions for the election. And the act further declares: "And if said agreement, as amended, be so ratified, the provisions of this act shall apply only to said tribes where the same shall not conflict with the provisions of said agreement."

That is, in the event that the agreement shall be ratified by a certain date, and it could only be ratified by a vote of the people, those parts of the act in conflict with it should not apply to them; otherwise to be in force. The vote was simply a method, and the only one open to the parties, of consummating the agreement.

"If an act is adopted by the legislature as a law, and, pursuant to its provisions, it is submitted to the people, and on their expression of approval or disapproval, as a fact or event, the act by its terms does or does not take effect, or takes effect at one particular date rather than another, then apparently the only question is whether the legislature can pass a law to take effect on such a contingency. The authorities would seem now to have established the doctrine, though not universally, that the result of a popular vote is a contingency on which laws may be enacted to take effect." Suth. Stat. Const., 76, '7.

But there is another reason why, in my opinion, the agreement may be maintained as a valid law, even though its only contingency is its acceptance or rejection by the Choctaw and Chickasaw people. It is this: The agreement, considered as a statute, is special and not general. It is local in its application. It affects only the people of these nations who live within the limits of a specified territory, a small portion of the Indian country. It preserves to them the existence of their government and limits its duration. It changes the title by which they hold their lands. It takes from their custody and control the interests in their coal and minerals and applies the funds arising from them to the maintenance of schools for the education of their children. It takes away from them, in many instances, the right to be tried in their own courts for crimes committed against their own government and in many other ways affects them locally. They are quasi foreigners to the people of the United States and have no voice in the enactments of the legislature of the Federal Government which governs them. If under any circumstances an act of Congress affecting a locality can be made subject to be accepted or rejected by a vote of the people to be affected, it seems clear to me that it ought to apply here.

"It is now settled that laws, at least of local application, may be imperative or permissive. They may authorize the people of cities, villages, townships, counties, groups of counties, or other limited

districts, not otherwise defined than for the purposes of such acts, to determine for themselves local questions of police, taxation, or any other matter affecting their local welfare, and the law may be conditioned to carry into effect their determination or option. They have thus been authorized to decide by popular vote and execute their decision to contribute for the building of railroads or other like public improvements; to divide a county or organize a new one; to establish or remove a county-seat; whether there shall be license or prohibition of the liquor traffic; whether paupers shall be a county or a township charge; whether they will have a system of free schools; whether domestic animals shall be permitted
67 to run at large. The people locally interested may have the option to accept or reject a municipal charter or amendatory acts or local police law. Acts giving such local options have not unfrequently been framed to secure it by making a new law go into effect or not, according to the result of a popular vote." Suth. Stat. Const., 80. And he cites many authorities.

It seems to me that under the facts and circumstances peculiar to these tribes of Indians and to this legislation, remembering that the desired legislation could not have been had without the consent of such tribes, and that that consent could only have been procured by a popular vote; that the statute, or that part of it which was submitted to their vote, was special, pertaining only to their local affairs, affecting only their rights, changing in important particulars their very form of government and the tenure by which they held their lands, changing and abrogating contracts which in the form of solemn treaties then existed between them and the United States, considering that they constitute a quasi sovereignty, but without any right or power to participate in the enactment of these laws which were to so vitally affect them and their interests, if in any case the contingency of a popular vote may be made an event upon which a statute may or may not take effect, this case should come within that rule.

I therefore hold that the statute is not void because of the fact that the agreement was submitted to a vote.

Having decided, then, that the Atoka agreement was constitutionally enacted into a law, the only question left for consideration is, is that part of it which has the effect of divesting the plaintiff of his right to hold the mine in controversy, to which he claims title, unconstitutional? As before stated, he claims title by virtue of sec. 18, art. 7, of the Choctaw constitution, which is as follows:

"Any citizen of this nation who may find any mine or mines, or mineral waters, shall have exclusive right and privilege to work the same, so long as he may choose, within one mile in any
68 direction from his works or improvements; provided, however, he does not interfere with the rights of the former settler."

After full investigation, I have held in the case of Amos *v.* Choctaw Nation, a citizenship case, that the Choctaw and Chickasaw people hold their land in common by a fee-simple title; but in the consideration of the effect to be given to the above provision of the

Choctaw constitution I do not consider it material whether the title is in the Choctaw people or in the tribe. In either event I think that the provision would be binding, because, if in the nation, it is their act, and if in the individual members of the tribe, the constitution, with this section included in it, having been submitted to their vote and adopted and confirmed by them, they would be bound by it as a contract or agreement between themselves as owners in common of the lands. The plaintiff, being one of these tenants in common, would take all that the Choctaw nation and Choctaw people could and did convey by this section of their constitution.

It is conceded that the plaintiff has performed all of the conditions necessary to acquire in and to this mine whatever rights this constitutional provision was intended to legally convey, and if this right so acquired is a vested one, notwithstanding the very large and extended powers which Congress or the General Government may have over these Indians and their property, I hold it has no power to divest a vested right relating to their lands, rights heretofore secured to them by acts of Congress, solemn treaties and deeds from the United States granting to them the lands for a valuable consideration and by fee-simple title. The argument that because of the almost absolute power of the United States to govern and control these Indians; that because the Federal Government is their guardian and they its wards it may take from them their vested rights without due process of law, I cannot deem sound. Since the act of Congress of March 3, 1871, these Indian tribes can no
69 longer enter into treaties with the United States, but are to be governed by Congress—that is, by law—and the highest law both to Congress and these Indians is the Constitution of the United States, which provides that "no person shall be deprived of life, liberty, or property without due process of law."

The question then is, did the plaintiff, by virtue of his discovery and his possession and operation of this mine in accordance with the aforesaid section of the Choctaw constitution, acquire a vested right to it? And this depends upon the answer to two others: First, was there any condition or limitation to the Choctaw title to prevent them from vesting in the plaintiff such a title; and, second, if so, have they, by the terms of the constitutional provision or by any other legal act, done so?

As to the title of the Choctaws: The first treaty relating to the cession by the United States of this land to the Choctaws was had on Oct. 18, 1820, 7 U. S. St. L., 210. The first article of the treaty cedes to the United States certain lands in Mississippi, and the second article provides:

"For and in consideration of the foregoing cession, on the part of the Choctaw nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi, situate between the Arkansas and Red rivers, and bounded as follows." Then follows the description.

On the 18th day of May, 1830, Congress passed the following act:

"SEC. 3. And be it further enacted: That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guaranty to them and their heirs or successors the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them
70 for the same; provided always that such lands shall revert to the United States if the Indians become extinct or abandon the same."

On September 27, 1830, the United States and the Choctaw nation entered into another treaty, the second article of which is as follows:

"Article II. The United States, under a grant specially to be made by the President of the U. S. shall cause to be conveyed to the Choctaw nation a tract of country west of the Mississippi river, in fee-simple to them and their descendants, to inure to them while they shall exist as a nation and live on it." 7 U. S. St. L., 333.

On March 23, 1842, a patent was executed to the Choctaws for their lands by the United States, the granting clause of which is as follows:

"Now, know ye, that the United States of America, in consideration of the premises and in execution of the agreement and stipulations of the aforesaid treaty (1830) have given and granted and by these presents do give and grant unto the said Choctaw nation, the aforesaid tract of country west of the Mississippi, to have and to hold the same, with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging, as intended to be conveyed by the aforesaid article in fee-simple to them and their descendants to inure to them while they shall exist as a nation and live on it, liable to no transfer or alienation except to the United States, or with their consent."

It has been held, and I think properly, that the act of Congress, the treaty, and the patent conveyed a fee-simple title, notwithstanding the limitation upon alienation; that this limitation simply had the effect to debase the fee and not to destroy it; but whether it was intended to convey the fee to the parties as a body corporate or to the individual members there is perhaps some doubt, but by the treaties of 1855 and 1860 the intention of the parties is made clear.

Art. 1 of the treaty of 1855, after defining the boundaries of the Choctaw and Chickasaw nations, provides as follows:

"And pursuant to an act of Congress, approved May 28, 1830,
71 the United States do hereby forever secure and guarantee the lands embraced within said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to hold in common, so that each and every member of either tribe shall have an equal undivided interest in the whole. Provided, however, no part thereof shall ever be sold without the consent of both tribes, and that

said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

Art. 11 of the treaty of 1866 in part provides:

"Whereas the land occupied by the Choctaw and Chickasaw nations, and described in the treaty between the United States and said nations of June 22, 1855, is now held by the members of said nation in common," etc. Whether the treaty of 1855 be taken as an interpretation of the terms of the grant made by the parties to it or as the engrafting of a new condition in it is immaterial, because, in any view of the case, after the execution of that treaty its terms would be binding. Theretofore the United States had been treating with the Choctaws alone in relation to their lands. Now a new party in interest appears. The Chickasaws, with the consent of the United States, had bought an interest in them, and it became necessary to define the rights and title of all.

I think there can be no doubt but that these Indians hold their lands as tenants in common, at least since the treaty of 1855; but by that treaty the United States is made to guarantee to each Indian an enjoyment of an equal undivided share of these lands, and the Choctaws agree with the Chickasaws that it shall be done.

The constitution, containing the provision by virtue of which the plaintiff claims title, was not adopted until 1860, five years after the treaty of 1855 was ratified, and neither the United States nor the Chickasaw nation were parties to it.

72 The United States had the right, by virtue of its superior sovereignty over these Indian tribes and its guardianship over their wards, which has always been recognized, to make such an agreement with them and enforce it.

If the 18th section of art. VII of the Choctaw constitution was intended to vest an indefeasible title to the coal mines in the discoverer, it would be in violation of two of the provisions of the treaty of 1855. First, it would be an appropriation and a sale of the realty without the consent of the Chickasaws; and, second, it would be in violation of that clause of the treaty which provides that the lands shall be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole.

There is no limitation in the constitution as to the number of mines which a discoverer may own and appropriate to himself. The language is, "Any citizen of this nation who may find any mine or mines, etc.," clearly giving to him the use of all he may discover. The records of the clerk's office of this court discloses that three of the most influential members of the Choctaw nation, all high officers of the government, on one day executed to a St. Louis coal company twenty-eight leases of coal claims, each of the twenty-eight embracing a circular area of land the diameter of which was two miles, about 2,000 acres each, and this probably did not include one-half of their claims. If one man should acquire them all his title to the whole would be as perfect as if he had discovered but one. Diamond drills have been run into nearly all of the coal lands of this nation, and wherever the drill would discover

coal in paying quantities the holes have been named in their paper claims and leases as monuments marking the center of each two-mile claim. Of course, this is going out of the record, for these facts are not in proof, but I merely mention them to show what the contention of the plaintiff leads to and how gravely this interpretation of the Choctaw constitution would be at variance with
73 art. 1 of the treaty of 1855, and the treaty between the United States and the Choctaws and Chickasaws having been adopted prior to the Choctaw constitution, if they conflict, the terms of the treaty must prevail; and if it be true that it was intended by this article of the constitution to convey an indefeasible title to the discoverer, so that he may hold the realty for all time against the will of the other tenants in common and of the Chickasaw nation and the United States, there is a conflict between it and the treaty.

I therefore hold that if the language of the constitution is to be construed as granting to the discoverer of mines in the Choctaw nation an indefeasible title or right to the mine discovered by him as to the underlying coal, it is void as being in conflict with the treaty of 1855. I do not deem it necessary to consider the question whether this constitutional provision was intended to convey the title to the mines or merely to grant to the discoverer a license, revocable or irrevocable, for the result would be the same. For the same reason that the Choctaw nation could not convey the title to its mines, it could not grant a license irrevocable to mine the coal. Both would be in violation of its obligations as provided by the treaty, and if it were a mere license revocable at its will the Choctaw people, the owners of the realty, by entering into the Atoka agreement, has but exercised its power of revocation.

A contract, although in writing, giving the right to mine ore does not convey the title; it is a mere license. Silsby *v.* Trotter, 29 N. J. Eq., 228.

"The owner of land, by a sealed and recorded instrument, granted and conveyed to A, his heirs, executors, administrators, and assigns, the exclusive right of entering on land and of erecting buildings, etc., for the purpose of boring oil, etc., but not to have possession of the land for any other purpose, A to deliver to the owner one-tenth of all oil gathered; to commence boring within a year or to forfeit all rights. Held, not a conveyance of the oil, but a license."
74 Shepherd *v.* McCalmont Oil Co., 38 Hun. (N. Y.), 37.

But this license may be revocable or irrevocable.

Considering this provision of the constitution as a contract, as it must be considered, whereby the Choctaw people agreed by a written instrument to grant a license to the discoverer of a coal mine to use it as long as he may choose, is it revocable?

The grant is without consideration, and it is revocable at the will of the grantee, and unless it be revocable at the will of the grantor there is a want of such mutuality in the contract as would render this provision void. Where there is no consideration, if the grantee may stop when he pleases, so may the grantor; and whether there be a consideration or not, if it is expressed in the instrument that

one may terminate it at will, the benefits of it will inure to the other.

In this case the grantee obligates himself to do nothing. He may quit at his will. The grantor is without power to enforce the contract as against him; besides, he has paid nothing for his privilege. It is without consideration, and nothing in the instrument binds him to a performance of its terms.

"It is a general principle that when from personal incapacity, the nature of the contract, or any other cause, a contract is incapable of being enforced against one party this party is equally incapable of enforcing it specifically against the other party." Fry on Spec. Perform., sec. 440.

"The parties to a contract must both be bound. If one promise in consideration of the promise of the other, the one is not bound unless the other is bound."

1 Wharton on Contracts, 2.

"The agreement, as before observed, must in general be obligatory on both parties. There are several cases satisfactorily establishing that if the one party never was bound on his part to do the act which forms the consideration of the promise of the other, the agreement is void for want of mutuality." 1 Chitty on Contract-, 297.

In Vogel *v.* Pekar, 157 Ill., 339, the contract was that "The said parties of the first part agree to employ the said party of the second part to perform such work as they may assign to him from time to time, such service to continue only so long as satisfactory to the said parties of the first part." Held, that as the party of the second part agreed to do nothing, it was void for want of mutuality; and the authorities are abundant to establish this principle.

In this case, what condition of the contract between the discoverer and his cotenant can be enforced against him? He may search for the hidden mineral or not, as he pleases. If he finds it, he may work it or not, as he may choose. If he work it, he may quit at his will. He may work much or little. He may locate one or many mines, and, no matter how profitable his enterprise may be to him, he pays no consideration to the owner, his grantor, for it. Under such circumstances it cannot be maintained that the right of revocation on the part of the Choctaw people does not exist.

But it is claimed that the plaintiff has obtained vested rights by virtue of the customs and usage of the Choctaw people from the fact that for a long time they have recognized this right, and stood by and permitted him to erect valuable improvements on the land and otherwise make a large expenditure of money in connection with the mines. The answer to this is that the usage, if any existed, is in harmony with the contract. By the terms of the contract he was to hold it until either party should exercise the right of revocation. And again, if the Choctaw people by deed could not convey an indefeasible title because of the provision of treaty stipulations, they could not do so by usage.

Again, it is claimed that the act of the Choctaw council of Sept.

18, 1896, had the effect of conferring the title to the discoverer of minerals. The first section of this act is as follows:

"SEC. 1. That the constitutional rights of any citizens of
76 the Choctaw nation to discover and claim any mine or mineral substance or anything of value found beneath the surface of the earth in this nation, and the right to work the same for the purpose of having such discovery made of value to himself and to the nation, as provided for by act of council passed and approved December 27, 1889, entitled 'An act to provide for the further development of the mineral resources of the Choctaw nation,' is hereby ratified and affirmed, and all such claims and discoveries where the laws of the nation have been observed in making and recording the same, are hereby declared to be the property of the citizen or citizens who have discovered and recorded such claims, their heirs or assigns, and are to be recognized and treated as the property of the citizens holding such claims, and may be by such holder sold, assigned or devised unto their heirs or assigns, provided the said heirs or assigns shall be citizens of the Choctaw nation at the time of making such disposition of such claims; and citizens holding such claims may lease them to non-citizens or foreign corporations, provided always that the interest and rights of the Choctaw nation are recognized in such leases. All leases of coal or other mineral rights heretofore made by citizens of the Choctaw nation to non-citizens or foreign corporations, in which leases the interest and right of the Choctaw nation have been recognized, the laws of the Choctaw nation observed, and the conditions and stipulations on the part of the lessee fulfilled, are hereby ratified and confirmed."

This act, if the Choctaw council had authority to pass it, undoubtedly passed title and a vested right to the discoverer of mines.

But if the people of the Choctaw nation, the owners of the realty, by a constitutional provision enacted by their direct vote, could not in this way convey title, how could their legislature do so? And if they could, where do they find warrant in the constitution for this legislation? The constitutional provision, in so far as the vesting of
77 title is concerned, is self-enacting. It needs no legislation. The Choctaw council has no power to convey their lands or in any way to fix upon the title any such vested interest as would interfere with the alienation of them by their owners. Not because it has not all powers usually vested in the legislature of representative governments, but because of the title which is in the people individually and not in the government. The title to their lands are unlike those belonging to the United States. As to them, the fee is in the Federal Government; but, as before stated, the title to the Choctaw lands is in the people as tenants in common, and they alone may convey. Doubtless the people could, by a constitutional provision submitted to their vote and adopted by them, vest in the council such power as they possess; but they have not done so. The constitution will be searched in vain for the discovery of any such agency; and it is the existence of this very condition that rendered it necessary to submit the Atoka agreement to a vote of the

people instead of to the council, and but for this all of the agreements made between the commissioners to the five civilized tribes and these Indians might be ratified by their councils; but this cannot be done. Because of their title, the agreements must be adopted and ratified by the owners, who are the people of these tribes who hold by a tenancy in common.

I therefore hold that the Choctaw council is without power to convey the title to or create any vested interest in these mines, and if the statute intends to do so it is void, both because in violation of treaty provisions and without constitutional warrant.

Finding no equity in the bill, the demurrer is sustained, the injunction refused, and the plaintiffs permitted to plead over.

UNITED STATES OF AMERICA, }
Indian Territory, Central District. }

I, E. J. Fannin, clerk of said district, hereby certify that the foregoing is a true and correct copy of the opinion of the court in the above-entitled cause as the same now appears on file in my office.

Witness my hand and the seal of said court this January 18, 1900.

{ Seal United States Court in the Indian Territory, Central District. }

E. J. FANNIN, *Clerk.*

78 [Endorsed:] File No., 17,518. Supreme Court U. S., October term, 1899. Term No., 404. W. H. Ansley *et al.*, app'ts, *vs.* N. B. Ainsworth *et al.* Stipulation and addition to record. Filed Feb'y 2, 1900.

Endorsed on cover: File No., 17,518. Indian Territory U. S. court. Term No., 404. W. H. Ansley, M. H. Gleason, and R. O. Edmonds, appellants, *vs.* N. B. Ainsworth, L. C. Burriss, O. E. Woods, James Elliott, and The Ola Coal and Mining Company. Filed September 26th, 1899.